H.R. 699, HARDROCK MINING AND RECLAMATION ACT OF 2009

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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Thursday, February 26, 2009

U.S. House of Representatives

Subcommittee on Energy and Mineral Resources

Committee on Natural Resources

Washington, D.C.

The Subcommittee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, Hon. Jim Costa [Chairman of the Subcommittee] presiding.

Present: Representatives Costa, Lamborn, Heinrich, Rahall [ex officio], Lummis and Hastings [ex officio].

Mr. COSTA. The legislative hearing for the Subcommittee on Energy and Mineral Resources will now come to order. The Subcommittee meeting today is to hear testimony on H.R. 699 as introduced by Chairman Nick Rahall from West Virginia.

This bill is not new. It is an effort that the Chairman has actually been a part of for some 30 years. The Hardrock Mining Law, frankly, in some instances one could argue, withstood the test of time since it was set into law and signed by President Ulysses S. Grant in 1872. It is my understanding that it has not been changed.

The purpose of the bill, therefore, is to modify the requirements in the original law as it relates to minerals on the public domain of lands, consistent with principles that Chairman Rahall believes are involved with the self-initiation of mining claims, and other purposes as it relates to ensuring that that resource is treated appropriately.

Clearly, no one could argue that a lot has changed since 1872. I have some ministerial functions with regard to the Subcommittee that I need to complete first.

Under Rule 4[g], the Chairman and the Ranking Member make opening statements. If any other Members have statements, they can be included in the hearing record under unanimous consent.

Additionally, under Rule 4[h], any material submitted for inclusion in the hearing record must be submitted no later than 10 days following the hearing, and that includes questions.

As I said at the outset, this hearing is about a 137-year-old mining law that has been under consideration for a number of decades. The reform of the Hardrock Mining Law on public lands is not a new issue to this Subcommittee or to the full Committee.

In the past two decades, I have researched—the Committee or the Subcommittee has held almost 40 hearings on it during that time period. As the Subcommittee Chair for the second term, the One Hundred and Tenth, and now One Hundred and Eleventh Congress, I have actually chaired three hearings on the reform of the law, two here in our Nation's Capital, and one in Elko, Nevada, in our Congressman Heller's district.

It was a very informative hearing that we held, and we are pleased that Representative Heller is here today to give us his thoughts.

This bill before us, that has been reintroduced by Chairman Rahall, is nearly identical to the one that the House of Representatives passed in 2007. The only changes have been minor and technical, and conform with changing the date of the bill from 2007 to 2009.

So it is in essence the same bill. Let me say in conclusion that obviously we are in a financial crisis, and that raises the question whether or not it is an appropriate time to consider new fees and requirements on the mining industry.

Let me just mention a few considerations that I think Members of the Subcommittee and the full Committee should take into account as the Chairman makes a determination when he wants to move on his measure.

Should taxpayers be on the hook obviously for a multi-multi-billion dollar cleanup cost that is impacting 160,000 hardrock abandoned mines in the West, especially since there are no royalty for gold removed from public lands.

Abandoned mines pose significant health hazard problems and safety issues. The 2008 Inspector General's Report of the Department of the Interior identified that 33,000 of the 160,000 abandoned mines, in fact, pose serious safety and health hazards.

That cleanup, obviously, if left unattended, then goes to the cost of Federal taxpayers, and many states and communities bear the burden also of those cleanups, or the risks when those cleanups do not take place. So reclamation jobs obviously provide a reason for reform of the mining law, as opposed to a retreat on this comprehensive reform.

Unfortunately, the National Mining Association was unable to testify today, but they have submitted written testimony, or we had asked them to testify, and they have been very involved, of course, in the last Congress, and as they will in this Congress, on this important issue.

I would ask unanimous consent that their testimony be included for the record, and we look forward to continuing to work with them.

[The statement submitted for the record by the National Mining Association follows:]

Statement submitted for the record by the National Mining Association

The National Mining Association (NMA) appreciates the opportunity to provide this statement to the Committee. NMA is the principal representative of the producers of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms that serve our nation's mining industry.

Our members have a significant interest in the exploration for and development of minerals on federal lands. The federal lands are an important source of minerals, metal production and reserves that are critical to the nation's economic security and well-being. Mining on federal lands creates high-wage jobs, contributes to the economic vitality of local communities and is essential for meeting the nation's resource needs and to rebuilding America.

NMA supports reasonable amendments to the Mining Law. However, provisions of the "Hardrock Mining and Reclamation Act of 2009" (H.R. 699) would put thousands of high-paying mining jobs and mining-dependent communities throughout the West at risk. American mining needs a predictable legal and regulatory framework to provide the long-term certainty and stability needed to protect existing investments and to attract new capital. H.R. 699's royalty would make U.S. mining non-competitive, and other provisions of H.R. 699 that are duplicative of other U.S. laws and regulations would create uncertainty that causes investment capital and jobs to go off-shore.

EIGHT PERCENT GROSS ROYALTY IS CLEARLY BAD PUBLIC POLICY

NMA supports a fair return to the public through imposition of a royalty. The "key is to achieve a royalty that most mines can bear and still make reasonable profits." (Oct. 2, 2007, testimony of James Otto before the House Natural Resources Committee.) H.R. 699, however, imposes the same 8 percent gross royalty that, according to the economic experts who testified during the 110th Congress, would wreak destruction on domestic mining industry., An 8 percent gross royalty made no sense when the U.S. economy was thriving—it is even worse public policy when we are in a recession. An 8 percent royalty on minerals produced on federal lands would be the world's highest government imposed royalty on minerals.

Since the imposition of a royalty has the potential to have significant economic consequences on existing and future mining operations, the type of royalty, the rate and its application to existing claims are all critical variables that must be considered. An 8 percent gross royalty does not properly balance a fair return to the public and the need to encourage the substantial capital investments required to explore for and develop minerals that provide the resources needed by our economy. Mining operations require long-term and substantial commitments of capital and years of development before investors realize positive cash flows. A royalty rate, that is the highest government-imposed rate in the world, will have a negative impacts on returns on investment, our ability to create good paying jobs here at home and our ability to meet more of our own needs for minerals. As noted by the World Bank:

> A mining country that relies on private firms to find and exploit its mineral resources must compete with other countries for investment. Its investment climate, which reflects how attractive the country is to domestic and foreign investors, depends ultimately on two considerations: first, the expected rate of return the country offers investors on their investments in domestic projects, and second, the level of risk associated with those projects.

Otto, James et al., *Mining Royalties: A Global Study of Their impact on Investors, Government, and Civil Society.* World Bank, 2006, p. 183.

The primary weakness of a gross royalty "is that low profit mines will have the same royalty basis as high profit mines, and this may impact them with regard to decisions about mine life, ore cut-off grade, and whether to continue operations when prices are low." (Oct. 2, 2007 Otto testimony) Because it is applied regardless of mine profitability, a gross royalty fails to take into account the cyclical and often volatile nature of commodity prices.

As demonstrated by extremes in highs and lows for commodity prices over the last couple years, the prices of hard rock minerals have historically been subject to great

fluctuation. (See Attachment A—Five year overview of select commodity prices.) The addition of a royalty can:

> turn a profitable mine into valueless rock with a sudden downturn in the market...Simply put, as commodity prices decrease the rate of return required to justify a mining investment increases more dramatically under a gross royalty than under a net royalty. Because the other costs of the mining operation are relatively fixed, the gross royalty takes a bigger bite out of the shrinking income pie as prices decrease.

Oct 2, 2007, testimony of James Cress before the House Natural Resources Committee.

A gross royalty would require a mining company to continue paying a royalty even when it is operating at a loss, and that royalty could even cause the loss. No mine can be operated long at a loss. The result would be that some mines shut down prematurely, jobs would be lost, federal state and local taxes would not be paid, and suppliers of goods and services would suffer. A net royalty, in contrast, does not cause mining operations to operate at a loss. A net royalty automatically reduces during periods of low prices and increases again when prices are higher, permitting mining operations to weather periods of low commodity prices and maximize the recovery of marginal ore during periods of high prices. Due to the cyclical nature of demand for mineral commodities, there have been and will always be periods of lower commodity prices. A net royalty provides the best incentive to explore for minerals on federal lands throughout economic cycles so that the nation's needs can continue to be met.

Because the commodities affected by H.R. 699 are sold on a world market, U.S. costs must be competitive to attract the investment needed to promote domestic mining. Obviously, the royalty will impact U.S. costs and, if not carefully crafted, will put U.S. mining projects at a competitive disadvantage. A high gross royalty ignores the fact that:

> The United States corporate tax rate of 35% is virtually the highest corporate tax rate in the world. This, combined with many high state levies, provide a significant negative incentive for future investments. Its major trading partners continue to lower their rates putting American corporations in increasingly uncompetitive situations.

Behre Dolbear, 2009 "Where Not to Invest."

U.S. IS BECOMING INCREASINGLY RELIANT ON FOREIGN SOURCES OF MINERALS

Despite reserves of 78 important mined minerals, however, the United States currently attracts only eight percent of worldwide exploration dollars. As a result, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements, even for minerals with adequate domestic resources. The U.S. Geological Survey (USGS) reported that America now depends on imports from other countries for 100 percent of 18 mineral commodities and for more than 50 percent of 43 mineral commodities. USGS Minerals Commodity Summaries, 2009, p. 7. This increased import dependency is not in our national interest. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, vulnerability to possible supply disruptions due to political or military instability, the loss of good-paying jobs and out-sourcing of downstream economic activity including fabrication and related technologies.

Our over-reliance on foreign supplies is exacerbated by competition from the surging economies of countries such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are ever-increasing; they are growing their economies by employing the same mineral resources that we used to build and maintain our economy. As a result, there exists a much more competitive market for global mineral resources.

MINING WILL PLAY A CRITICAL ROLE IN REBUILDING OUR ECONOMY

Mining can help rebuild America and American communities with high-paying jobs and needed resources in these tough economic times. More than 50,000 Americans are employed at U.S. metals mines. They meet half of this country's manufacturing needs and can do more. Another 200,000 jobs are created because of U.S. metals mines—generating $12.5 billion in payroll and $4.2 billion in personal income and payroll taxes. In fact, the U.S. produces more than $25 billion in metal mining products generating nearly $60 billion in economic output. These operations truly are the economic engines that drive countless communities across the West. Mining's average annual wage of $59,000 is 33 percent higher than the combined annual average for all industrial jobs. These are jobs and operations that can play

a vital role in rebuilding America, but they cannot shoulder the world's highest royalty and remain competitive in the international marketplace.

The importance of the domestic mining to our economy, our way of life and our national security cannot be ignored. Indeed, it is irresponsible for us to ignore the vast mineral resources we have within our nation's boundaries when our domestic needs are so great. The United States needs robust minerals production to help meet the needs of American consumers, the largest users of mined materials. U.S. mining provides nearly 50 percent of the metals American manufacturers need to operate, including iron ore, copper, gold, phosphate, zinc, silver and molybdenum. All aspects of modern society are made possible through mining. We rely on metals and minerals to meet our electronic, telecommunications and national security needs.

Furthermore, minerals will play a key role as we investigate renewable and alternative energy sources to help our nation reduce its reliance on foreign sources of oil. For example, while the average car requires up to 50 pounds of copper, hybrid plug-in cars will require an additional 25-50 pounds of copper for the battery, cabling harness and other components. Wind turbines such as the Vestas V90—3.0 MW require approximately 335 tons of steel; 4.7 tons of copper; 3 tons of aluminum; 13 tons of glass fiber; and 1,200 tons of reinforced concrete. Minerals are also critical components of projects that are part of the economic stimulus package signed by President Obama on Feb. 17, 2009. No infrastructure project, including bridges, buildings or transportation can move forward without minerals and metals.

THE ENVIRONMENTAL PROVISIONS OF H.R. 699 ARE UNNECESSARY AND DUPLICATIVE OF EXISTING STANDARDS

H.R. 699 directs the Secretaries of the Interior and Agriculture to promulgate new environmental and reclamation standards for mineral activities on Federal lands. Such requirements are totally unnecessary since they would be duplicative of the standards that are already in place. Under current law, a mineral exploration or mining operation on federal lands is subject to a comprehensive framework of federal and state environmental laws and regulations including: the Clean Water Act; the Safe Drinking Water Act; the Clean Air Act; the National Environmental Policy Act; Toxic Substances Control Act; the Resource Conservation and Recovery Act; the Endangered Species Act; and the Bureau of Land Management (BLM) and Forest Service surface management regulations for mining. These laws and regulations are "cradle to grave," covering virtually every aspect of mining from exploration through mine reclamation and closure. According to the 1999 report on issued by the National Academy of Sciences (NAS) panel of experts convened by Congress, this existing framework for mining is "generally effective" in protecting the environment. Hardrock Mining on Federal Lands, National Academy of Sciences, National Academy Press, 1999, p. 89.

That 1999 NAS report also found that "improvements in the implementation of existing regulations present the greatest opportunity for improving environmental protection...." Id. at 90. Notably, the Department of the Interior's 2000 and 2001 regulations governing mining and reclamation on BLM lands significantly strengthened the standards for mining on federal lands, including new provisions on guaranteeing reclamation through financial assurances.

Importantly, the NAS panel of experts cautioned against applying inflexible, technically prescriptive environmental standards stating that "simple "one-size-fits-all" solutions are impractical because mining confronts too great an assortment of site-specific technical, environmental, and social conditions." Id. Furthermore, recognition of the existing comprehensive framework of federal and state environmental and cultural laws that already regulate all aspects of mining from exploration through mine reclamation and closure avoids unnecessary and expensive duplication. Additional standards or enforcement mechanisms are not needed to protect the environment.

Similarly, existing laws and authorities are adequate to close certain "special places" to mining activity. Congress has closed lands to mining for wilderness, national parks, wildlife refuges, recreation areas, and wild and scenic rivers. Congress also has granted additional authority to the Executive Branch to close federal lands to mining. The Antiquities Act authorizes the president to create national monuments to protect landmarks and objects of historic and scientific interest. Finally, Congress authorized the Secretary of the Interior to close federal lands to mining pursuant to the land withdrawal authority of the Federal Land Policy and Management Act. As a result of these laws and practices, new mining operations are either restricted or banned on more than half of all federally owned public lands. These existing laws and authorities are adequate to protect special areas. New closures of public land, based on vague and subjective criteria without congressional oversight,

as contemplated in H.R. 699 would arbitrarily impair mineral and economic development.

CONCLUSION

U.S. metals mining is needed to rebuild America. NMA supports responsible updates to the General Mining Law to keep U.S. mining strong, but H.R. 699 is the wrong medicine for our economy. NMA appreciates the opportunity to provide this testimony.

Mr. COSTA. We now have before we get to our witness from Nevada, our colleague, an opening statement from the Ranking Member of this Subcommittee, Representative Doug Lamborn of Colorado.

STATEMENT OF THE HONORABLE DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. I thank you, Mr. Chairman, and I look forward to working with you and the other Members of this Committee on a lot of important issues as we go forward.

Today we are meeting for the first of what I hope will be several hearings on mining in America. There are a number of critical issues which we hopefully will be addressing in this Committee.

We should hold a hearing focusing on the importance of an expanded domestic mineral supply. According to the USGS, we are more than 50 percent dependent on, quote, 43 mineral commodities, and 100 percent import reliant for 18.

This reliance threatens our economic security. On Tuesday night, the President called upon America to expand our domestic renewable resource manufacturing. That expansion will depend heavily on the mineral resources of America to provide the raw materials for that manufacturing.

The President specifically highlighted the manufacturing of lithium batteries. The United States is currently 50 percent dependent on foreign sources of lithium.

We will not be able to rely on foreign imports forever. I would like to offer for the record a recent article highlighting a move by Bolivia to nationalize its lithium mines.

NOTE: The New York Times article entitled "In Bolivia, Untapped Bounty Meets Nationalism" dated February 3, 2009, has been retained in the Committee's official files. It can be found at http://www.nytimes.com/2009/02/03/world/americas/03lithium.html?__r=1&th&emc=th.

Mr. LAMBORN. We should hold other hearings on how to best improve abandoned mine lands and how to streamline the permitting process. Hopefully in future hearings we can have experts from industry give us that important perspective.

Updating the mining law has been an elusive task. We can constructively explore many of the same principles, discussing a reasonable royalty going forward, using a portion of the proceeds from locatable minerals to help pay for improving abandoned mine lands, and presumably maintaining a vital domestic mining industry.

However, just as with the debate on oil and gas development in the outer continental shelf, environmental activists make what

should be a simple task extremely difficult. It is reflected in the legislation that we will be discussing today.

Many witnesses at the hearings held in 2007 told us this legislation, if enacted, would decimate the domestic hardrock mining industry, sending some of the highest paying jobs in the American west overseas, and making the United States even more dependent on foreign sources of mined materials.

Members from western states like mine will fight vigorously to keep these jobs, because the West cannot survive on tourism alone. I would want to submit for the record at this point a recent CRS report comparing the salaries of workers in the mining industry versus those in the tourism industries.

Mr. COSTA. Without objection.

[The CRS Memorandum follows:]

Congressional Research Service

MEMORANDUM February 24, 2009

To: Honorable Doc Hastings
Attention: Kathy Benedetto

From: Robert Pirog, Specialist in Energy Economics, 7-6847

Subject: **Wages of workers in the mining and tourism industries**

This memorandum responds to your request for an update of a memorandum to the House Committee on Resources dated March 8, 2007. That memorandum showed average weekly earnings data for the overall private non-farm economy, mining, and certain aspects of tourism. The table on the following page presents updated average weekly earnings for the same industries for the years 2005 through 2008. It differs from the data in the previous memorandum in two ways. First, the data for 2006 are final and not preliminary. Second, Bureau of Labor Statistics preliminary data for 2008 are included.

As in the March 8, 2007 memorandum, certain aspects of the data may limit its usefulness for comparisons. The data are for production and non-supervisory employees and, as a result, do not include the earnings of higher paid managerial employees. The percentages of managerial employees in the selected industry segments may also vary.

Second, there is some variation in the worker groups for which the data are collected. In goods-producing industries (e.g. mining), the data include production workers only and exclude non-supervisory workers not directly involved in production. In service industries (e.g. tourism), the data are for all non-supervisory workers. The difference in definitions for inclusion might affect average earnings levels.

Third, part time workers are included in the Bureau of Labor Statistics earnings data. If a particular industry segment includes a large component of part time workers, this may bias the weekly earnings report downward. Additionally, reported earnings in some aspects of tourism might be supplemented by gratuities that are not included in the data.

If you have additional questions, please call me.

Table 1. Average Weekly Earnings of Mining and Selected Tourism Industry Workers
(Unadjusted, nominal dollars per week)

Industry	2004	2005	2006	2007	2008
Total Private Sector	$529.09	$553.31	$580.38	$548.60	$613.05
Oil and Gas Extraction	807.50	856.34	920.74	1014.97	1120.06
Mining, except oil and gas	909.45	941.10	967.24	972.83	1017.36
Scenic and sightseeing transportation	352.08	382.75	525.21	535.09	562.38
Travel arrangement and reservation service	472.18	472.18	516.46	548.74	540.54
Museums	396.49	400.96	410.15	434.75	441.13
Zoos, botanical gardens, nature parks, et.	344.04	348.97	352.79	358.89	378.59
Amusement parks and arcades	241.58	261.40	338.89	395.62	420.19
Hotels and motels, except casino hotels	301.53	312.35	346.01	382.22	399.40
RV parks and campgrounds	266.70	253.16	286.91	303.76	327.10
Full Service Restaurants	218.38	222.20	231.53	244.37	249.74
Drinking places, alcoholic beverages	175.35	180.56	185.44	199.75	212.89

Source: U.S. Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics Survey (National), at www.bls.gov/data

Notes: Average weekly earnings should not be multiplied by 52 to derive annual earnings. Employment in some industries is less likely to be year-round than in other industries. Also, reported earnings do not include gratuities.

Mr. LAMBORN. Thank you, Mr. Chairman. If the past is any indication, we are going to hear some real rhetorical language about the 1872 mining law here today. We will hear, quote, the law was passed in 1872 and is 137 years old.

Simply because something is old does not mean that it is inherently bad. Yellowstone National Park was also created in 1872. The fact is the Congress that passed the law that created Yellowstone National Park, and a few days later passed the mining law, recognized that while we need to protect special areas, we also need to use some of our lands to supply the raw materials to develop a growing nation.

We may hear the law allows public lands to be purchased $2.50 or $5 per acre. In reality, while those are the statutory fees included in the law, there has been a moratorium on patenting since 1994.

We may hear that the mining law needs modern environmental laws. Modern mining operates under the same strict environmental

laws that Americans rely on to protect their air, water, and quality of life, and those include the following: the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation Liability Act, CERCLA, Toxic Substance Control Act, NEPA.

All these laws provide for public notice and comment opportunities, citizen lawsuit provisions, and various appeal processes, that allow the public and affected communities to fully participate in the mine permitting process.

In fact, all of these opportunities to challenge mining projects have served to draw out the permitting process for projects on Federal lands, and today it can take 12 years or more to get a final approval to operate a mine.

Mr. Chairman, two years ago when the House considered very similar legislation, we were in a very different economy. For example, copper prices were over $3 per pound, and global demand was resulting in record prices for recycled copper.

This demand for recycled copper led to an epidemic of copper theft across the United States. In California, thieves stole copper wire from irrigation pumps, which left farmers incapable of watering their crops.

However, that economy is not the economy we have today. Today, we are struggling to rebuild America's economy and create jobs. This bill as drafted would do irreparable harm to that recovery.

We need the raw materials we get from mining to expand our economy and build the infrastructure we need, and we need mining jobs, many of which are unionized, and which are some of the highest paying jobs in the country.

If we want to become the world leader in lithium battery production, for instance, we need to mine more lithium. If we want to lead the world in the manufacturing of solar panels, then we need to produce more silicon and titanium.

If we want to lead the world in the manufacturing of water turbines, we need more zinc. Finally, if we want a smart grid electrical system, and hybrid cars, we must have copper.

All of these resources must be mined. Building the mines to supply the resources, and building the factories that use those resources, will put Americans to work in the private sector.

Like off-shore oil, this is a debate about using American resources to create American jobs and wealth. There is much that we can agree on, Mr. Chairman, and I hope that going forward with additional hearings, we can examine many of these areas, and craft a bill which will grow, not shrink, America's economy.

Thank you for this time I look forward to hearing from our witnesses, and I would also ask for unanimous consent for the Ranking Member of the full Committee to also make an opening statement at the proper time.

[The prepared statement of Mr. Lamborn follows:]

Statement of The Honorable Doug Lamborn, a Representative in Congress from the State of Colorado

Thank you, Mr. Chairman. Today we are meeting for the first of what I hope will be several hearings on mining in America. There are a number of critical issues which we should be addressing in this committee.

HEARINGS

We should hold a hearing focusing the importance of an expanded domestic mineral supply. According to the USGS, we are more than 50% dependent on "43 mineral commodities and 100% import reliant for 18." This reliance threatens our economic security. Tuesday night the President called upon America to expand our domestic renewable resource manufacturing. That expansion will depend heavily on the mineral resources of America to provide the raw materials for that manufacturing.

The President specifically highlighted the manufacturing of lithium batteries. The United States is currently 50% dependent on foreign sources of lithium, We may not be able to rely on foreign imports forever. I would like to offer for the Record a recent article highlighting a move by Bolivia to nationalize its lithium mines.

We should hold other hearings on how to best improve abandoned mine lands and how to streamline the permitting process. Hopefully, in future hearings we can actually have experts from industry give us that important perspective

MINING LAW

Updating the Mining Law has been an elusive task. We agree on many of the same principles: reasonable royalty going forward, a portion of the proceeds from locatable minerals to help pay for improving abandoned mine lands, and presumably maintaining a vital domestic mining industry. However, just as with the debate on oil and gas development in the outer continental shelf, environmental activists make what should be a simple task extremely difficult.

It is reflected in the legislation we will be discussing today. Many witnesses at the hearings held in 2007 told us this legislation, if enacted, would decimate the domestic hard rock mining industry sending some of the highest paying jobs in the American West overseas, and making the U.S. even more dependent on foreign sources of mined materials.

Members from Western States like mine will fight vigorously to keep these jobs because the West cannot survive off of tourism alone. I want to submit for the record at this point a recent CRS report comparing the salaries of workers in the mining industry versus those in the tourism industries.

If the past is any indication, we are going to hear some real rhetorical whoppers about the 1872 Mining Law here today. We will hear that: "The law was passed in 1872 and is 137 years old". Simply because something is old, doesn't mean that it is inherently bad, Yellowstone National Park was also created in 1872. The fact is the Congress that passed the law that created Yellowstone National Park and a few days later passed the Mining law recognized that while we need to protect special areas we also need to use some of our lands to supply the raw materials to develop a growing nation.

We may hear that: "The law allows public lands to be purchased for $2.50 or $5.00 per acre". In reality while those are the statutory fees included in the law, there has been a moratorium on patenting since 1994.

We may hear that: "The Mining Law needs modern environmental laws." Modern mining operates under the same strict environmental laws that Americans rely on to protect their air, water, and quality of life.

- The Clean Air Act (CAA);
- The Clean Water Act(CWA);
- The Endangered Species Act (ESA);
- The Resource Conservation and Recovery Act (RCRA);
- The Comprehensive Environmental Response Compensation Liability Act (CERCLA), otherwise known as superfund;
- Toxic Substance Control Act, and
- National Environmental Policy Act (NEPA).

All these laws provide for public notice and comment opportunities, citizen lawsuit provisions, and various appeal processes that allow the public and affected communities to fully participate in the mine permitting process. In fact all of these opportunities to challenge mining projects have served to draw out the permitting process for projects on federal lands and today it can take 12 years or more to get a final approval to operate a mine.

CLOSING

Mr. Chairman, two years ago when the House considered this legislation we were in a very different economy. For example, copper prices were over $3 per pound and global demand was resulting in record prices for recycled copper. This demand for recycled copper led to an epidemic of copper theft across the United States. In California, thieves have stolen copper wire from irrigation pumps which left farmers incapable of watering their crops

However, that economy is not the economy which we have today. Today we are struggling to rebuild America's economy and create jobs. This bill as drafted would do irreparable harm to that recovery. We need the raw materials we get from mining to expand our economy and build the infrastructure we need. And we need mining jobs, many of which are unionized, and which are some of the highest paying in the country.

If we want to become the world leader in lithium battery production, we need to mine more lithium. If we want to lead the world in the manufacturing of solar panels, than we need to produce more silicon and titanium. If we want to lead the world in the manufacturing of wind turbines, we need more zinc. Finally, if we want a smart grid electrical system and hybrid cars, we must have copper. All of these resources must be mined

Building the mines to supply the resources, and building the factories that use these resources will put American's to work in the private sector.

Like offshore oil, this is a debate about using American resources to create American jobs and wealth. There is much we can agree on Mr. Chairman and I hope that going forward with additional hearings we can examine many of those areas and craft a bill which will grow, not shrink, America's economy.

Thank you for this time, and forward to hearing from our witnesses.

Mr. COSTA. Thank you. I thank the gentleman from Colorado for his comments, and I would now like to defer to the Chairman of the full Committee, whose legislation that we are hearing testimony on today, a gentleman who has been tirelessly attempting to bring the hardrock mining law in reflection to today's challenges and modern circumstances that we face, Chairman Nick Rahall from West Virginia.

STATEMENT OF THE HONORABLE NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Chairman RAHALL. Thank you, Chairman Costa. I appreciate you holding these hearings once again, and to the Ranking Member, Mr. Lamborn, and to the Ranking Member of the full Committee, Mr. Hastings, and to our colleague from Nevada, Mr. Heller.

I appreciate all of you presenting testimony today, and in particular I want to recognize the first witness that is on panel number two, Mr. John Leshy. John has been around this issue longer than—well, I won't go there, but anyway, he——

Mr. COSTA. Longer than you?

[Laughter.]

Chairman RAHALL. Well, Mr. Lamborn has said with age things are not harmed any, but I am still——

Mr. COSTA. They get better.

Chairman RAHALL. They are still in need of redo, as is the Mining Law of 1872.

[Laughter.]

Chairman RAHALL. But to Mr. Leshy, he is really considered the guru of the mining law reform, and I really appreciate the books that he has written on the issue, and the trusted counsel he has been for so many decades, and I know that his testimony will be very worthy of this Committee's consideration.

The old saying that the more things change, the more they stay the same, may be particularly appropriate to the mining law reform. Nearly everything has changed about mining since 1872 when Congress enacted the mining law, including the following: how we mine, and the environmental impacts of those mile-wide

pits, what we mine, and how we use hardrock minerals like uranium for nuclear power, and iridium for solar p.v. cells, the value of what we mine, like gold, which is today nearly $1,000 an ounce. Record highs.

The fact is that in every other country, companies pay a royalty to mine hardrock minerals, but they do not pay such a royalty in the United States of America. The legacy is 161,000 abandoned hardrock mines in the West.

Yet, the mining law has not changed in 137 years. Even the Grand Canyon, which was established as a national park 90 years ago today, has changed. Today our goals for mining policy simply are no longer what they were in 1872.

The bill that I have introduced, which passed the House by an overwhelming majority last Congress, support on both sides of the aisle, reflects a need for a comprehensive overall.

In recent years its industry profits soared, mining analysis have glowingly titled their annual reports, quote, mining, as good as it gets. And, quote, again, riding the wave.

Meanwhile, Congress continues to allow companies with lucrative activities on public land to escape paying a fair return to the American people, the true owners of the land, for the gold, copper, and other metals and minerals.

Over the years, actually the decades, that I have been involved in this effort, we have developed a lengthy record endorsing a gross income royalty as the best choice for the government to ensure a fair return for use of our resources from hardrock mining.

Even in these days of economic crisis, I believe that is still true. As the Congressional Research Service has determined, and I quote, the vast majority of mining activity on Federal lands is gold mining.

This is significant because although other mineral prices have fallen, gold prices, which I already referred to, fare pretty well, and profits might even go up. Earlier this month the mining sector analysis of precious metal costs predicted that an unprecedented rate of cost deflation will boost the economy, the economics of gold mines, and gold projects.

According to a New York Times article in January, and I quote, industry lobbyists did not complain when the Nevada legislature passed a measure in early December requiring mining companies to pay $28 million in '09 taxes early to help the State patch its shortfall in revenue.

Finally, we should remember that for some communities the need to change the mining laws right to mine and lack of environmental protections simply cannot afford delay. The basic environmental standard and the basic ability to protect resources like water is just common sense.

In this time of economic crisis let us not be mislead into letting an outdated boondoggle hang on the books. We are only adding to our list of financial woes and the environmental challenges facing our western communities.

And I dare say that the mining industry itself would like to see this cloud removed from over its head, and would like the certainty and continuity of planning for the future that any business enter-

prise would want to do so that they can continue to provide the jobs for their people.

Coming from a mining state as I do, I certainly recognize that certainly in the future that all industry needs in their financial planning. So, again, Chairman Costa, and Subcommittee Members, I thank you for holding this hearing. I yield back.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources

Mr. Chairman, thank you for holding this hearing on H.R. 699, legislation I have introduced to reform the Mining Law of 1872. The old saying, "the more things change, the more they stay the same" may be particularly appropriate to Mining Law Reform.

Nearly everything has changed about mining since 1872 when Congress enacted the Mining Law, including:

- How we mine and the environmental impacts of those mile-wide pits.
- What we mine and how we use hardrock minerals—like uranium for nuclear power and indium for solar PV cells.
- The value of what we mine—like gold, which today is nearly $1,000 an ounce.
- The fact that in nearly every other country, companies pay a royalty to mine hardrock minerals, but they do not in the United States.
- The legacy of 161,000 abandoned hardrock mines in the West.

Yet the Mining Law has not changed in 137 years. Even the Grand Canyon, which was established as a national park 90 years ago today, has changed.

Today, our goals for mining policy simply are no longer what they were in 1872. The bill that I have introduced—which passed the House by an overwhelming majority last Congress—reflects the need for comprehensive overhaul.

In recent years, as industry profits soared, mining analysts have glowingly titled their annual reports "Mining: As Good as It Gets" and "Riding the Wave." Meanwhile, Congress continued to allow companies with lucrative activities on public lands to escape paying a fair return to the American people for gold, copper, and other metals minerals.

Over the years, actually, the decades that I have been involved in this effort, we have developed a lengthy record endorsing a gross income royalty as the best choice for the government to ensure a fair return from hardrock mining.

Even in these days of economic crisis, I believe that is still true.

As the Congressional Research Service determined, "the vast majority of mining activity on Federal lands is gold mining." This is significant because although other mineral prices have fallen, gold continues to fare well—and profits might even go up.

Earlier this month, a mining sector analysis of precious metals costs predicted that "an unprecedented rate of cost deflation" will boost the economics of gold mines and gold projects. According to a New York Times article in January: "[I]ndustry lobbyists did not complain when the Nevada legislature passed a measure in early December requiring mining companies to pay $28 million in 2009 taxes early to help the State patch its shortfall in revenue."

Finally, we should remember that for some communities, the need to change the Mining Law's "right to mine" and lack of environmental provisions simply cannot afford delay. A basic environmental standard and a basic ability to protect resources like water, is just common sense. The way the Mining Law works now, BLM officials and communities who question a proposal to mine have little influence. According to BLM, among the 486 plans of operation for hardrock mines that were submitted in the past 10 years, only 2.4% were rejected.

In a time of economic crisis, let us not be misled into letting an outdated boondoggle hang on the books. We are only adding to our list of financial woes and the environmental challenges facing Western communities.

Again, Chairman Costa and Subcommittee Members, thank you for holding this hearing.

Mr. COSTA. Thank you very much, Chairman Rahall, for your focus, and for your tenacity, and for the expertise that you lend to not only this issue, but all the issues that we deal with in the Natural Resources Committee.

We have our Ranking Member, Doc Hastings, from Washington State, who I understand also has a statement that he would like to make.

STATEMENT OF THE HONORABLE DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thank you very much, Mr. Chairman, and I will make my comments very brief. But I simply want to reiterate two important points made by Mr. Lamborn. And that is, first, we need to recognize the significant role that minerals and metals play in our economy, and how important they are to the manufacturing jobs, especially to developing alternative sources of energy that Mr. Lamborn laid out.

Mining creates thousands and thousands of jobs across this country, and it is the very economic foundation of many communities across the country. The minerals and metals mined in America are vital for the broad array of American industries.

We can produce minerals here in our country and create jobs for Americans, or we can drive these jobs overseas and become dependent on China and other nations for the raw materials needed to sustain manufacturing jobs.

During the first week of this administration, we have seen the Interior Department take action after action that is costing us the creation of new jobs. Yesterday's announcement on oil shale R&D leases was Secretary Salazar's third announcement this month regarding delays in America's energy development.

From withdrawing land leases in Utah, to halting off-shore drilling, and now oil shale, the administration is walking away from utilizing America's resources to become less dependent on foreign countries.

Our economy cannot afford to have the Federal Government keep saying, no, no, no, to the creation of new energy and production jobs. I think this same principle applies to mining.

We must be honest that the jobs of American workers are at risk if the Federal Government imposes excessive and costly regulations and fees on mining in America. With our shaky economy, Congress needs to be extremely thoughtful and act very carefully in the consideration of mining law changes.

And that brings me to the second point that was made by Mr. Lamborn that I want to emphasize, and that is that this Committee must not rush to judgment or attempt to speed through changes without taking the time to examine the impact and costs of such proposals.

Mining law reform has been on the table for some time as has been said several times this morning, but the new Members of the House, and the new Members of the Senate, need the opportunity to review and consider this issue, and the new administration, especially deserve to have their views heard.

So as Mr. Lamborn said, this needs to be the first of several hearings, and thank you very much for your consideration.

[The prepared statement of Mr. Hastings follows:]

Statement of The Honorable Doc Hastings, a Representative in Congress from the State of Washington

My comments will be brief. I simply want to reiterate two very important points made by Mr. Lamborn.

First, we need to recognize the significant role that minerals and metals play in our economy, how important they are to manufacturing jobs, and especially to developing alternative sources of energy.

Mining creates thousands and thousands of jobs across this country, and the very economic foundations of many communities are mining jobs. The minerals and metals mined in America are vital for a broad array of American industries.

We can produce minerals here in our country and create jobs for Americans, or we can drive these jobs overseas and become dependent on China and other nations for the raw materials needed to sustain American manufacturing jobs.

In the first weeks of this Administration, we've seen the Interior Department take action after action that is costing us the creation of new jobs.

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From withdrawing land leases in Utah, to halting offshore drilling and now oil shale, the Administration is walking away from utilizing American's resources to become less dependent on foreign countries. Our economy can't afford to have the federal government keep saying no, no, no to the creation of new energy production jobs.

This same principle applies to mining. We must be honest that the jobs of American workers are at risk if the federal government imposes excessive and costly regulations and fees on mining in America. With our shaky economy, Congress needs to be extremely thoughtful and act very carefully in the consideration of mining law changes.

This brings me to the second point made by Mr. Lamborn that I want to emphasize, and that's that this Committee must not rush to judgment or attempt to speed through changes without taking the time to examine the impacts and costs of such proposals.

Mining law reform has been on the table for some time, but the new Members of the House and Senate need the opportunity to review and consider this issue. And the new Administration especially deserves to have their views heard. As Mr. Lamborn said, this needs to be the first of several hearings.

Mr. COSTA. I thank the gentleman from Washington State very much for your comments. We will now have our first witness, Representative Dean Heller from Nevada. I misstated in my earlier comment that the hearing that we held in his district in Elko, Nevada, was last year.

I was reminded that it was in 2007. It seemed like it was last year, but how time flies, but it was a very informative trip for the Subcommittee, and we appreciated the hospitality, and I think we all came away with a much greater appreciation for the work that takes place there.

Representative Heller, would you please make your opening statement. We would like to keep it to five minutes. We do have another panel that follows, and today is obviously a busy day with other hearings as well, but we do appreciate you coming, and we know of your great interest on this issue.

STATEMENT OF THE HONORABLE DEAN HELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. HELLER. Thank you very much, Mr. Chairman, and I will tell you that I do appreciate your trip, whether it was last year or the year before. In fact, I am still getting very positive feedback on your interests and the time that you spent in Elko.

So it has not gone unnoticed. In fact, I will be in Elko tomorrow night, and I am certain that it will come up again.

Mr. COSTA. I liked Elko. It is a good community. When is the cowboy poetry festival coming up?

Mr. HELLER. It just passed. You just missed it.

Mr. COSTA. I just missed it? Well, one of these years.

Mr. HELLER. So I want to thank you very much for the opportunity to testify. I want to thank the Ranking Member Lamborn also for the opportunity to be here. Chairman Rahall, thank you for your time and effort on this issue.

I know you said that this is something that you have spent decades dealing with. Rumor has it you were a witness to the original signing of this piece of legislation.

[Laughter.]

Mr. HELLER. So I don't know how many decades that may be, but——

Chairman RAHALL. And it won't be forgotten, despite my age.

[Laughter.]

Chairman RAHALL. I am well preserved.

Mr. HELLER. Yes. I want to introduce one of my constituents, County Commissioner Sheri Eklund-Brown, is here from Elko, Nevada. She will be here to testify on the importance of the mining industry and the impact that it has on her community. So I just want to thank her for being here today, and she will be on the second panel.

As I mentioned, Mr. Chairman, you were kind enough to come to Elko to hold a field hearing, and witness first-hand the importance of hardrock mining and the industry to my district.

You were also able to see the effect of stewardship, and strong sense of community responsibility of the operators in my district. I know that because of your visit you are familiar with the provisions of H.R. 699, and I believe it jeopardizes the livelihood of my rural constituents.

Let me be clear. The onerous mining law reform proposed by my colleague will not only threaten the domestic viability of large mining companies. It will also hurt small independent businessmen and women in Nevada that support the mining industry.

And we can ill-afford to lose any jobs in Nevada, or anywhere else for that matter. Nevada currently has the highest and has had the highest foreclosure rate in the Nation for 23 straight months.

7.3 percent of all housing in Nevada has received at least one foreclosure notice. Clark County, taking in Las Vegas, has had almost 9 percent of its properties affected. Washoe County, which is the largest county in my district, has seen a 153 percent increase in foreclosures since 2007.

In fact, local industry experts estimate that Clark County has a 25,000 home inventory, or an estimated four year supply. However, there are bright spots in Nevada's economy that are still thriving, and those are the areas where mining activity is taking place.

To put it into context, Nevada has a statewide unemployment rate of 9.1 percent, while in Elko, the micropolitan areas, the rate is 4.9 percent. The most recent statistics show that in Nevada mining directly employs 11,690 people, at an average wage of over $63,000 per year.

An additional 51,000 jobs are made possible by activities related to the mining industry, largely in rural communities. Mining is also an important contributor to local and State tax revenue.

In 2007 the mining industry in Nevada paid $200 million in taxes. That is enough to pay for more than forty-seven hundred teachers' annual salaries in Nevada. As we have debated, it is important to remember that unlike other businesses, mineral prices are set on the commodities markets.

So they are forced to absorb all of the costs imposed by this legislation. My fear after consulting with my constituents is that the cost imposed by this legislation will put them out of business, which will consequently increase economic problems in my state.

We all acknowledge that there have been irresponsible practices in the past, but those days are long gone in Nevada. The companies, both large and small, in my district have made great progress, and are committed to good stewardship and community responsibility.

The minerals mined in Nevada are an important part of our daily lives. We need gold for electronics, barite to make rubber, tungsten for heavy equipment, lithium for advanced battery technology, silica for glass, molybdenum to make steel alloys.

Without minerals mined in Nevada, our military won't be as strong. Our economy will be compromised, and we will have to rely on foreign countries for the minerals that power our economy, just as we are reliant on them for fuel.

While I applaud my colleague's effort to modernize mining law, I am concerned about the consequences of this bill as written. It would be a shame if we made changes to the mining law that favored importing mineral resources from foreign countries, while exporting the benefits.

I hope that we can work together to improve opportunities for domestic mining, while addressing some of the outstanding issues associated with the historic mining activities conducted prior to the creation of the strict environmental laws and regulations that govern mining activities today.

My primary concern is that changes made to the mining law should not serve to increase our dependence on foreign sources of mineral resources that our nation needs, and certainly should not increase unemployment in my state.

We have to get our mineral resources from somewhere, and I believe that we should get them in a responsible manner from domestic resources mined by American workers. With that, Mr. Chairman, I will conclude.

[The prepared statement of Mr. Heller follows:]

Statement of The Honorable Dean Heller, a Representative in Congress from the State of Nevada

Mr. Chairman, thank you for giving me the opportunity to testify today. As you know, H.R. 699, the Hardrock Mining and Reclamation Act will have a direct and substantial impact on Nevada and my constituents if it becomes law.

In fact, one of my constituents, Commissioner Sheri Eklund-Brown, is here from Elko, Nevada to testify about the importance of the mining industry in our most vibrant mining community. I would like to thank her for being here today.

Mr. Chairman, you were kind enough to come to Elko to hold a field hearing and witness firsthand the importance of hardrock mining industry to my district. You

were also able to see the effective stewardship and strong sense of community responsibility of the operators in my district.

I know that because of your visit, you are familiar with the provisions of H.R. 699 that I believe jeopardize the livelihood of my rural constituents.

Let me be clear, the onerous mining law reform proposed by my colleague will not only threaten the domestic viability of large mining companies, it will also hurt the small, independent businessmen and women in Nevada that support the mining industry.

And we can ill afford to lose any jobs in Nevada, or anywhere else for that matter.

Nevada has had the highest foreclosure rate in the nation for 23 straight months. 7.3 percent of all housing in Nevada has received at least one foreclosure notice. Clark County, taking in Las Vegas, has had almost 9% of its properties affected. Washoe County, which is the largest county in my district, has seen a 153% increase in foreclosures since 2007. In fact, local industry experts estimate that Clark County, Nevada has a 25,000 home inventory—an estimated 4 year supply.

However, there are bright spots in Nevada's economy that are still thriving, and those are the areas where mining activity is taking place.

To put it into context, Nevada has a statewide unemployment rate of 9.1%, while the Elko Micropolitan area's rate is 4.9%.

The most recent statistics show that in Nevada, mining directly employs 11,690 people at an average wage of over $63,000 per year. An additional 51,000 jobs are made possible by activities related to the mining industry, largely in rural communities.

Mining is also an important contributor of local and state tax revenue. In 2007 the mining industry in Nevada paid $200 million in taxes. That is enough to pay for more than 4700 teachers annual salaries in Nevada.

As we have this debate, it is important to remember that unlike other businesses, mineral prices are set on the commodities market, so they are forced to absorb all of the costs imposed by this legislation. My fear, after consulting with my constituents, is that the costs imposed by this legislation will put them out of business, which will consequently increase economic problems in my state.

We all acknowledge that there have been irresponsible practices in the past, but those days are long gone in Nevada. The companies—both large and small—in my district have made great progress and are committed to good stewardship and community responsibility.

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While I applaud my colleague's efforts to modernize mining law, I am concerned about the consequences of his bill as written.

It would be a shame if we made changes to the mining law that favored importing mineral resources from foreign countries while exporting the benefits. I hope we can work together to improve opportunities for domestic mining while addressing some of the outstanding issues associated with the historic mining activities conducted prior to the creation of the strict environmental laws and regulations that govern mining activities today.

My primary concern is that changes made to the mining law should not serve to increase our dependence on foreign sources of mineral resources that our nation needs and certainly should not increase unemployment in my state. We have to get our mineral resources from somewhere and I believe we should get them in a responsible manner from domestic resources mined by American workers.

Mr. COSTA. Thank you very much, Representative Heller, for your comments. Any questions or comments to the gentleman from Nevada? Yes, Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. Representative Heller, do you have a perspective on how industry would be affected if a royalty is imposed on a gross basis, as opposed to a net basis?

I know that there are possibly some serious tax differences, depending on which of those is chosen ultimately.

Mr. HELLER. Yes.

Mr. LAMBORN. But do you have a perspective on that?

Mr. HELLER. Well, we shared some of them in the past, the impact of gross taxes, as opposed to a net tax. In fact, I believe one of my amendments in the past was to impose a five percent net tax, as opposed to the eight percent gross, because the obvious impact an eight percent gross would have.

And I would like to encourage the Committee to reconsider and to take a look at that again. Certainly it will have a major impact on business as we see it in the mining industry in Nevada.

Currently, mining prices, and I think it is well established, are doing well, and it is not unusual for a very weak economy to have very strong gold prices. It is very cyclical.

It wasn't long ago, just within the last couple of years, that you saw mining under $300 an ounce. If this economy grows, if you believe what the President is telling us in his speeches that we are going to get out of this, and I truly do believe that is going to happen, I don't think we are going to see sustained gold prices.

Mr. COSTA. It is countercyclical.

Mr. HELLER. Yes, absolutely, and I am betting on the economy, which I am sure most, if not all, here in this room are doing so.

Mr. COSTA. Yes.

Mr. HELLER. And so that will have an impact. To double that the Nevada legislature is currently in session, and they are also taking a look at the mining industry. So it is going to be a double hit I think the industry's concern is.

And again I think that question perhaps would be better laid in front of the association, or perhaps Ms. Eklund-Brown, when she comes and testifies in the second group, specifically the impacts an eight percent gross would have over perhaps something closer to a five percent net. I think that question should be and could be out there.

Mr. COSTA. The gentleman from West Virginia has a question or a comment.

Chairman RAHALL. Just to follow up on that point, as the gentleman from Nevada and the Chairman are all involved in this issue know, we have had various proposals on the royalty rate in the past, and at every stage, let us say, the process has been different, and proposals offered on the royalty rate.

And I am not adverse to considering a variable, a variable—excuse my accent. It is not because of my age—a variable rate royalty, because as you mentioned, today gold is up, and tomorrow it could be down. Copper is down today, and tomorrow it could be up.

Every one of the minerals has that variable rate, depending on the recyclical rate, depending on what the economy is doing. So perhaps, and I ask for the gentleman's thought on this, the Secretary maybe should have the discretion of adjusting rates according to the cyclical nature of the economy. Your thoughts?

Mr. HELLER. Yes. I would love to sit down and discuss that with you and have an open conversation about that. I do think there is room. I do think this is a good time to take a look at the mining law. I even think the industry agrees that there needs to be some movement for something that was signed into law many, many years ago.

So certainly I would love to have that discussion and see if there are some options available to move in that direction.

Chairman RAHALL. Thank you.

Mr. COSTA. Thank you, the gentleman from West Virginia. A follow-up question to his point and your point, and your statement about obviously I think we all want to maintain the viability of the hardrock mining industry in this country for all the reasons that have been stipulated.

What is your thought—and, I mean, you just acknowledged that industry, and they have told me, and you and I have had conversations over the past two years, where do you think is the critical change that needs to be made with trying to provide some revenue stream on the health and safety on the abandoned mines?

I mean, where are the critical areas that you think need to be addressed that are deficient?

Mr. HELLER. According to my discussions with industry experts, they are expecting to see some changes, and would love to see changes in that particular area. I think some of the other changes that I discussed was to make sure that the revenues that were raised, that a certain percentage of it goes back to the areas where in fact they were mined so that they can be used for the specific purposes that you are talking about, and that is to mitigate the abandoned mine issues that we have throughout the State of Nevada.

And I think I had an amendment a year ago or two years ago that did just that, that did increase the percentage that would come back to help with the abandoned mine issues.

I think even the industry is eager to discuss this. I think they are eager to discuss perhaps what the revenue stream may be that would come out of a piece of legislation like this.

But I don't think they are closing the doors to negotiate by any means. I am not sitting here saying that we can't have a bill by any means. I think that we do need to discuss mitigation issues from the past, and I think we need to discuss if a revenue stream is available, what can the industry itself absorb.

Mr. COSTA. Thank you very much. Any further questions? Hearing none, why don't we go to our full panel.

Mr. HELLER. Thank you.

Mr. COSTA. Thank you for your patience, and the individuals that we have today have well established experience and expertise on this subject matter. We have Mr. John Leshy. We have Ms. Robin Nazzaro, Mr. James Reynolds, and The Honorable Jim Starr, and The Honorable Sheri Eklund-Brown.

So these distinguished individuals, we look forward to your testimony, and please come forward, and it looks like it will be the Ranking Member and myself here. So we won't be too lonely.

I will take them in the order that they are listed here. So I believe all of you are familiar with this process, but just to remind you that we have a five minute rule on your stated testimony.

There is a light there in front of you. It has green, yellow, and red. The green is on for the first four minutes. The yellow goes on when you have one minute left, and then the red light goes on when the five minutes have expired.

The Chairperson truly appreciates when those testifying stay within the five minute limits. Actually, the Chair has been known to give extra bonus points when those come under the five minutes. But we do appreciate your testimony.

Obviously, if you have a more detailed analysis that you would like to provide us, we appreciate that, and that is submitted in a written form for the benefit of Committee Members, as well as our staffs.

So obviously we take your written testimony that is more detailed, and any graphs or charts that you might have that can be included. So we will go through the following five witnesses in our second panel, and then open it up for questions or comments that Members of the Subcommittee may have.

With that understood, let us begin with Mr. John Leshy, who has already been acknowledged. He is the former Solicitor General for the Department of the Interior. He also has part of his resume and background as a Professor at the University of California at Hastings College of Law, and I suspect that part of his professorship as a law professor deals with mining law, I suspect. I just suspect that. So, Mr. Leshy, would you please open on our testimony.

STATEMENT OF JOHN D. LESHY, SOLICITOR GENERAL, DEPARTMENT OF THE INTERIOR [1993-2001], HARRY D. SUNDERLAND DISTINGUISHED PROFESSOR, UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW

Mr. LESHY. Thank you. Thank you, Mr. Chairman, and I appreciate the Chairman's remarks at the beginning, and I appreciate the Chairman's tenacity in pursuing this issue. I will do my best to earn bonus points here.

There is a certain ritual quality to these hearings, but it is an important set of issues, and deserves airing, and I am glad that it is being aired again today. Old is not necessarily bad. But the Mining Law of 1872 is really totally out of step with fundamental principles that have guided national policy for many, many decades.

Mining companies, and it bears repeating, pay no rental. They pay no royalty. They make no other payment to the Federal treasury that recognizes that the people of the United States own the minerals that they are mining.

Their position is unique in two distinct ways. All other users of the Federal lands, whether it is oil and gas companies, coal developers, timber harvesters, energy companies that run transmission lines, cattle grazers, and even these days hunters, anglers, and other recreationists, pay the government something, and in most cases something like market value for the publicly owned resources that they are using or removing.

And, second, practically everywhere else in the world that hardrock mining companies operate, on state and private lands in the United States, and just about everywhere abroad, they pay something to the government and to others who own the minerals for the privilege of extracting them.

And so it is long past time that Congress close this loophole. The justifications that were once offered for this kind of public giveaway of public property when gold has strategic value, and the

West was sparsely settled back after the Civil War, those justifications, of course, have long since disappeared.

About 85 percent of the gold mined today is used to make jewelry, and the West has long been the fastest growing region of the country, and in terms of gold strategic value, I would remind the Committee that in World War II, at a time of national emergency, gold mines were shut down by the government because the mining effort took away from the war effort and did not support it.

Attached to my written statement are statistics, very interesting statistics, on the gold production in the United States over time, and the fact that it has tremendously accelerated in the last 30 years, and also statistics on the price of gold.

And this illustrates well I think that the industry can absorb a modest royalty payment, such as is contained in H.R. 699.

Second, the mining law results in inadequate protection of the environment and other uses of the public lands, and here again all other users of the public lands who can cause significant environmental disruption are subject to a straightforward regulatory system that requires them to minimize their environmental effects, and clean up any mess that they create.

And all other users of the public lands are subject to the fail-safe authority of the government to prevent proposed activities that threaten major environmental harm that cannot be mitigated appropriately.

Mining is a dirty business and needs to be carefully controlled. When things go wrong, history teaches in hardrock mining, the costs to repair the damage can be enormous.

Well over a century of mining under the Mining Law of 1872 has saddled the nation's taxpayers with the cleanup costs for thousands of abandoned mines that approaches something like $50 billion.

And it bears emphasizing that despite the fact that the Clean Water Act and some of these other modern environmental laws do apply to hardrock mining, bad mines still fall through the regulatory gaps.

There are a number of major modern mines that have opened under modern regulatory controls that have failed, and the government and the taxpayer are on the hook to clean them up, and it is long past time to close these loopholes.

Finally, reforming the mining law will not as some maintain bankrupt or put an end to the domestic mining industry. Every year, as this Committee is aware, Canada's Fraser Institute surveys mining industry executives, and ranks jurisdictions around the world on who is favorable to mining, including factors such as regulatory controls and political stability, and every year the American west is at the top or near the top of those rankings.

Gold prices skyrocketing means the industry is thriving as never before, and the cost of a modest royalty can be readily absorbed. The basic objective of H.R. 699 is to put in place practices and policies that oil and gas operators, coal miners, electric utilities, ski areas, and other intensive users of the Federal lands have operated under quite successfully for decades.

I have no doubt that this industry, which contains a number of innovative, progressive companies that have flourished around the world will adapt readily to such reforms, just like other users have

successfully adapted to similar requirements imposed on them over the last many decades. And I thank you for your attention, and I look forward to any questions you may have.

[The prepared statement of Mr. Leshy follows:]

Statement of John D. Leshy, Harry D. Sunderland Distinguished Professor, University of California, Hastings College of the Law

I appreciate your invitation to testify today, and I applaud your subcommittee once again taking the initiative to address reform of the Mining Law of 1872. There is no more important task among the constellation of issues raised by our public lands.

I am the Harry D. Sunderland Distinguished Professor of Law at the University of California, Hastings College of the Law, and was Solicitor of the Department of the Interior from 1993 until 2001. I appear here today as a private citizen, expressing my own views, and not representing any group. I have worked on Mining Law issues for thirty-five years, in academia, in government and in the nonprofit sector. I have testified many times on the subject of Mining Law reform. I am appending to this statement my testimony before this subcommittee nineteen months ago.

Rather than simply repeat that testimony, in this statement I will address four specific issues:

1. The profitability of the industry and its ability to compensate the American public for the privilege of extracting the public's minerals.
2. Determining what adequate compensation is. H.R.699 would require those extracting hardrock minerals from federal land to pay a royalty. But many large hardrock mining operations in the west extract no or very little ore from federal lands. This is because the ore bodies have been previously patented under the Mining Law and become private property. Yet these same operations use large tracts of federal lands for waste dumps and tailings piles. Under current law, they pay the federal government nothing for that privilege, and it is possible they would continue to be exempt from significant payments under H.R. 699 as it is currently written.
3. The so-called "right to say no" issue; namely, whether reform legislation should unambiguously authorize the federal government to reject proposals to locate mines on federal lands if they pose unacceptable environmental damage or sacrifice other important values found on federal lands.
4. Whether uranium, currently governed by the Mining Law for the most part, should be made leasable under the principles of the Mineral Leasing Act.

On the first issue, profitability, gold is by far, by every measure, the most important hardrock mineral governed by the Mining Law of 1872. Exhibit A charts U.S. gold production since 1840. The vast majority of that production is found on federal or formerly federal lands. As it shows, during the 1980s, production greatly increased above historical levels and has remained high ever since. This increase resulted from two factors: high gold prices, and development of heap-leach techniques to recover gold from disseminated low-grade deposits, particularly in Nevada. It is also worth noting that this increase coincided with the federal government's first serious efforts to control hardrock mining to protect the environment.

Today, the U.S. is the fourth largest gold-producing country in the world (behind Australia, South Africa and China). The vast majority of U.S. production (more than 80%) comes from gigantic open pit mines in Nevada. Only those other three countries and Peru produce more gold than is produced in the state of Nevada.

Exhibit B charts the price of gold over the past forty years. It shows a rapid increase in price in the late 1970s and the relative high values since then. Indeed, since April 2001 gold has more than tripled in value against the U.S. dollar, and it has been hovering around $1000 an ounce. While in real dollar terms this is well below the January 1980 peak, many investors have long tried to preserve assets by investing in precious metals in times of serious economic difficulty like we face today, and therefore many observers expect the price of gold to remain high for the foreseeable future.

The costs of mining that gold are well under one-half of the current gold price. See, e.g., the 2006 Economic Overview of Nevada Mining. This report, which may be found at http://www.nevadamining.org/position/economy, shows a 2006 average cost of production of $365 to $435 per ounce, depending upon whether non-cash costs like depreciation, reclamation are included). A February 2008 white paper by Standard & Poor's showed that Barrick and Newmont, the two largest gold mining

companies in Nevada, had company-wide cash costs of between $282 and $377 per ounce. https://www.compustatresources.com/support/pub/whitepapers/pdf/Mining.pdf

Gold is, and has been for quite a long time, a very profitable industry. Its current position is indeed enviable in comparison to the economic carnage currently being visited across much of the American economy. It can readily absorb the modest royalties levied in H.R. 699.

On the second issue, making sure the government is adequately compensated, the royalty in H.R. 699 would apply, according to section 102, to the "production of all locatable minerals from any mining claim located under the general mining laws and maintained in compliance with this Act." This means the royalty would presumably apply only to mineral ore extracted from federal lands. It would not, in other words, include any kind of charge for the use of federal lands to support the extraction of minerals from formerly federal lands.

Many, perhaps most, of the very large hardrock mining operations in the West which comprise the bulk of domestic production are on lands in a mixture of ownerships—private, state and federal. The ore body itself may not include any federal lands, or at most mere slivers or odd-shaped parcels intermixed with others. Very often, in other words, all or most of the actual ore body is on non-federal land, usually because it has already been patented under the generous terms of the Mining Law. See, e.g., Mineral Resources: Value of Hardrock Minerals Extracted From and Remaining on Federal Lands (GAO/RCED-92-192, August 1992).

Even where the U.S. no longer owns any part of the ore body, the federal lands usually play a key role in bringing the ore body into production—by providing lands for mineral processing, for dumping waste rock and mine tailings, and so forth. It is not unusual for the ore body of a large mine to be 90% or more in private ownership (having been previously patented under the Mining Law, at a price of $2.50 or $5.00 per acre). Yet that same mining operation may occupy thousands of acres of nearby federal land as waste rock dumps and tailings piles, which are a permanent and exclusive use, as the land is of little use for things like wildlife habitat.

Under current administration of the Mining Law, the U.S. receives no compensation for the use of its land for waste dumps and tailings piles, if they are claimed as "millsites." Yet mining companies were required to secure access to federal land for these purposes under Title V of the Federal Land Policy and Management Act of 1976—which would be the case if this were a power plant, a transmission line, a water recharge project, or a factory—they would be required to pay fair market value for the land.

Mine operators who permanently encumber thousands of acres of federal land as dumping grounds for waste ought to be required to pay a fee that reflects the value these federal lands contribute to the entire mining operation.

I am not comfortable that H.R. 699 addresses this important issue clearly enough. It provides, in section 304, that a mining company securing an operations permit can conduct that mine on "any valid mining claim, valid millsite claim, or valid tunnel site claim," and may also use "such additional Federal land as the Secretary may determine is necessary to conduct the proposed mineral activities, if the operator obtains a right-of-way permit for use of such additional lands under Title V of [FLPMA] and agrees to pay all fees required under that title for the permit under that title." This language leaves room for the industry to argue that it can locate and accumulate unlimited numbers of 5 acre millsites, and thereby secure the right to occupy thousands of acres of federal land at a token cost, and not have pay the federal government fair market value, as it would if it used the permit process of FLPMA Title V for that purpose.

Whether the Mining Law allows the accumulation of an unlimited number of millsites has never been finally and definitively resolved. When I was Solicitor of the Department of the Interior in 1997, my office prepared a legal opinion affirming a long-standing legal interpretation that mining claimants were limited to one millsite per lode or placer mining claim. My successor in the Bush Administration signed an opinion in 2003 disagreeing with that conclusion. No federal court has squarely addressed this disagreement. The reference in the current legislation to "valid" millsites may be read as endorsing the 1997 Opinion, but a more forthright declaration of that principle would be welcome, because the American public which owns these lands ought to be fairly compensated for their use.

On the third issue, the right to say no, the hardrock mining industry has argued that the government already has sufficient authority to protect the environment and

other values of the federal lands from hardrock mining operations. Yet they resist saying so in any Mining Law reform legislation.

The record is clear that existing standards and practices are not adequate to protect multiple uses of the public lands and a healthy environment, and clarifying and upgrading environmental standards is a principal reason to reform the Mining Law.

Looking first at the Bureau of Land Management's current "Part 3809" regulations governing surface management of hard rock mining on BLM-managed lands, early on the George W. Bush Administration weakened these regulations significantly, removing a number of key provisions that had been added by the Clinton Administration. Compare 65 Fed. Reg. 69,998 (2000) with 66 Fed. Reg. 54,837 (2001). One of the most important was to eliminate the federal government's explicit authority to disapprove proposed hardrock mines on federal lands that threatened devastating, uncontrollable harm on other important natural and cultural resources.

The Bush Administration acted on the basis of a Solicitor's Opinion issued by my successor, which overruled an opinion I had issued in 1999. These dueling legal opinions differed on how to interpret a key phrase in the Federal Land Policy and Management Act of 1976 (FLPMA), in which Congress expressly amended the Mining Law to require the Interior Secretary to protect the public lands from "unnecessary **or** undue degradation" (emphasis added). 43 U.S.C. § 1732(b).

My legal opinion was that "or" means "or," so that BLM has a responsibility to regulate hardrock mining on the public lands to protect against "undue" degradation, even if that degradation is regarded as "necessary" to mining. My successor's legal opinion was that "or" is better understood as meaning "and." Thus, in his view, BLM has no authority to prevent hardrock mining that causes "undue" degradation if such degradation is "necessary" to mining.

Environmental groups asked a federal court to settle this dispute. After full briefing, the court ruled that my reading of FLPMA was correct. Somewhat bizarrely, however, the court decided not to set aside the Bush Administration's removal of that express authority from the Part 3809 regulations. Conceding the question was "indeed extremely close," the court was persuaded by the Department of Justice's argument that—even conceding that the Bush Administration's Solicitor was wrong on the law—those regulations need not articulate that authority in so many words. *Mineral Policy Center v. Norton,* 292 F. Supp. 2d 30, 46 n. 18 (D.D.C. 2003). Neither side appealed this ruling.

The counterpart U.S. Forest Service regulations (36 C.F.R. Part 228) are even weaker. This is not surprising, for the Forest Service was long reluctant to regulate hardrock mining. Congress gave it express authority to regulate mining to prevent destruction of the national forests way back in 1897 (see 16 U.S.C. §§ 478, 551), but it did not exercise this authority for more than three-quarters of a century. The regulations it finally adopted in 1974 were relatively tepid and have changed little since, despite vast ensuing changes in hardrock mining technology and practices.

The Forest Service regulations require mining operations to "minimize," "where feasible," environmental impacts on national forest resources, 36 C.F.R. § 228.8 (emphasis added), and to take only "practicable" measures to "maintain and protect fisheries and wildlife habitat which may be affected by the operations," id., at 228.8(e) (emphasis added). In other words, the Forest Service, like the Interior Department, currently takes the position that the government cannot turn down a proposal to locate a hardrock mine on lands it manages even if it threatens dire environmental harm. The courts have refused to overturn this position. *Okanogan Highlands Alliance v. Williams,* 236 F.3d 468 (9th Cir. 2000).

Also in this connection, the hardrock industry sometimes tries to draw a distinction between environmental regulation standards and standards to protect other land resource values. This distinction is very hard to draw, and is not useful in this context. Environmental standards are imposed to protect other resource values. For example, the government controls air and water pollution in part to protect viewsheds and wildlife habitat found on federal lands.

Every decision made to allow a particular use of public lands ought to consider the impact of that use on other uses and values. The government routinely does that when it decides whether to authorize any and all other uses of the federal lands. There is no persuasive reason to give proposals to open hardrock mines an exemption.

H.R. 699 properly recognizes that this is too important a matter to be left ambiguous. It states, in section 301, that the operative principle is that the government will "not grant permission to engage in [hardrock] mineral activities" if it determines that "undue degradation would result from such activities." The public interest requires no less. Every other user of the public lands—oil or coal company, forest products company, electric utility, rancher, hunter, angler, or hiker—is held to that common-sense standard. Hardrock mining, which has the potential to cause more

serious disruption than practically any of these others, deserves no special exemption.

On the fourth issue, whether uranium should be made a leasable mineral, the answer seems to me is clearly yes. All the other energy fuels—coal, oil and gas, tar sands, oil shale, and geothermal resources—are governed by leasing systems, most dating back to 1920. Leasing enables the government to better protect the public's fiscal and environmental interests. Past and current controversies about uranium mining around such national treasures as the Grand Canyon only underscore how ill-suited the Mining Law is to govern uranium development. Indeed, some federal uranium is already subject to leasing rather than to the Mining Law—a result of post-World War II withdrawals of some federal land on the Colorado Plateau that vested the old Atomic Energy Commission with jurisdiction, now exercised by the Department of Energy.

There is, moreover, no justification for continuing to subsidize the domestic uranium industry (and with it the civilian nuclear power industry) by allowing publicly-owned uranium to be mined without a royalty or other payment to the Treasury. As with hardrock mining, past uranium mining and milling has left a big cleanup bill for the taxpayer. The government is currently spending many millions of dollars, for example, to move a large mill tailings pile away from the banks of the Colorado River adjacent to Moab, Utah, on top of much public money it has already spent cleaning up uranium mines and mills. And there is more to do. Consumers of uranium should pay these bills, not general taxpayers. Finally, there is no strategic argument for subsidizing domestic uranium production when the friendly countries of Canada and Australia have abundant uranium resources. For all these reasons, I believe the idea of simply putting uranium under the Mineral Leasing Act ought to be given very serious consideration. It would be a welcome part (but only a part) of Mining Law reform.

Conclusion

Once again, I applaud your taking up this important issue of public policy, and I stand ready to advance this effort any way I can.

Graph of US gold production 1840-2006. Data 1900-2006 from http://minerals.usgs.gov/ds/2005/140/ . Data 1840-1899 from: US Census Bureau (1960) Historical Statistics of the United States, p.371.

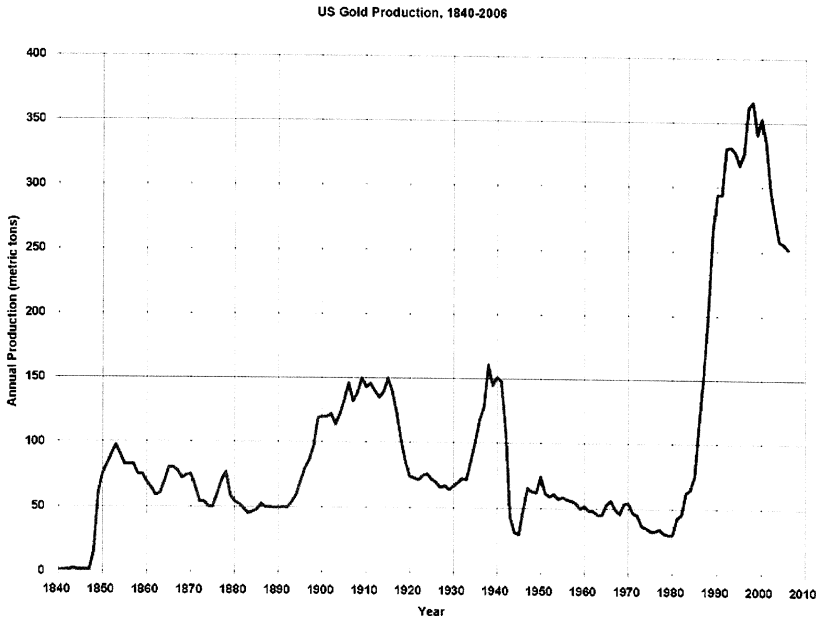

EXHIBIT B

File:Gold Price (1968-2008).gif - from Wikipedia, the free encyclopedia
A historic long term candlestick chart in a logarithmic scale of the gold price measured in the United States dollar for the years 1968 — 2008. Source: produced from London Bullion Market Association gold fixing. 24 Jan, 2009

ATTACHMENT A

STATEMENT OF JOHN D. LESHY
AT THE
HEARING ON H.R. 2262, THE HARDROCK MINING AND RECLAMATION ACT OF 2007
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
JULY 26, 2007

I appreciate your invitation to testify today, and I especially appreciate this subcommittee taking the initiative to address reform of the Mining Law of 1872. There is no more important task among the constellation of issues raised by our public lands, which encompass nearly one-third of the Nation's real estate and a much larger portion of its valuable natural resources, including minerals.

I appear here today as a private citizen, expressing my own views, and not representing any group. I have worked on Mining Law issues for thirty-five years, in academia, in government and in the nonprofit sector. I hope in this testimony to provide some larger perspective on the effort you have initiated with the introduction of H.R. 2262.

Calls to reform the Mining Law date back to a few years from its passage, and have been made by many U.S. Presidents, from Republicans like Theodore Roosevelt and Richard Nixon to Democrats like Jimmy Carter and Bill Clinton. Almost forty years ago, as Stewart Udall was stepping down after eight years as Secretary of the Interior, he called its repeal the biggest unfinished business on the Nation's natural resources agenda.

Signed into law by President Ulysses S. Grant four years before the telephone was invented, this antiquated relic is the last statutory survivor of a colorful period in

the Nation's history that began with discovery of gold in the foothills of the Sierra Nevada in 1848. The mining "rushes" that ensued accelerated the great westward expansion of settlement. And they swept to statehood California (the golden state), Nevada (the silver state), Montana (the treasure state), Idaho (the gem state) and eventually Arizona (the copper state). The same era witnessed the enactment of numerous other laws filling out the framework for that great movement—laws like the railroad land grant acts and the Homestead Act of 1862. A generation later, Congress followed up with landmark laws like the National Forest Organic Act in 1897 and the Reclamation Act of 1902, and a generation after that, with the National Park Organic Act of 1916 and, in 1920, the Mineral Leasing Act and the Federal Power Act.

All of those other laws have long since been repealed, replaced, or fundamentally reformed, often more than once. Today the public lands and resources are managed under laws like the Federal Land Policy & Management Act of 1976, the Federal Coal Leasing Amendments of 1976, the Surface Management Control and Reclamation Act of 1977, the National Forest Management Act of 1978, the Reclamation Reform Act of 1982, and the Federal Oil and Gas Leasing Reform Act of 1987.

Amazingly, despite the fact that, since 1872, the population of the U.S. has grown more than seven-fold (from less than forty million to more than 300 million), the population of the eleven western states plus Alaska (where the Mining Law principally applies) has grown from about one million to nearly 70 million, and our society and economy have changed in ways beyond comprehension, the Mining Law has escaped fundamental overhaul.

It is not for lack of trying. It has long been recognized that the Mining Law is thoroughly out of step with evolving public resource management principles. Indeed, the first Public Land Commission created by Congress to assess public land policies recommended in 1880 that it be thoroughly rewritten. That recommendation has been echoed by many blue-ribbon commissions since. There is widespread agreement that the Law's three most important shortcomings are as follows:

> First, the Mining Law allows privatization of valuable public resources, at bargain-basement rates. This so-called patenting feature is the last vestige in federal law of nineteenth century public land disposal policy. Much abused for purposes that have nothing to do with mining, it has resulted in an area of federal land larger than the state of Connecticut passing into private ownership, much of it in scattershot inholdings that continue to complicate land uses throughout the West to this day. While Congress has since 1994 enacted appropriation riders to forestall new applications for patents, it must do so each year, or patenting resumes.
>
> The fragility of these riders was driven home in the fall of 2005 by the now-infamous Pombo-Gibbons legislative proposal that would have lifted the moratorium on new patents and greatly liberalized the terms of patenting. That ill-conceived proposal—which passed the House but then died under a storm of protest—could have resulted in the privatization of more millions of acres of federal lands.
>
> As long as privatization remains a core feature of the Mining Law, the temptation remains for future mischief-makers to try similar stunts. Patenting is not necessary to mine; indeed, the Supreme Court recognized in 1884 that the "patent adds little to the security of the party in continuous possession of a mine he has discovered or bought." Many large mines are found at least partly on un-patented federal lands. It is time for Congress to repeal, once and for all, the Mining Law policy allowing willy-nilly privatizing of the federal lands.
>
> Second, the Mining Law fails to produce any direct financial return to the public. Mining companies are charged no rental, pay no royalty, and make no other payment that recognizes that the people of the U.S. own the minerals being mined. This is unique in two ways. First, virtually all other users of the public lands—oil and gas and coal developers, timber harvesters, energy companies that run transmission lines across the federal lands, cattle graziers, and even, these days, hunters, anglers and other recreationists—pay the government something (in most cases, something like market value) for the publicly-owned resources being used or removed. Second, everywhere else hardrock mining companies operate on this earth—on state or private lands in the U.S., and just about everywhere abroad—they pay royalties to the governments and others who own the minerals.
>
> It is time for Congress to close this glaring loophole. Whatever justification might once have been offered for such a giveaway of public property—such

as when gold had strategic value and the West was sparsely settled—has long since disappeared. Today 85% of the gold mined is used to make jewelry, and the West has long been the fastest-growing region of the country.

Third, the Mining Law results in inadequate protection of the environment and other uses of the public lands. All other users of the public lands who can cause significant environmental disruption are subject to a straightforward system of regulation which requires them to minimize the environmental effects of their activities and clean up any mess they create. And all other users are subject to the fail-safe authority of the government to say no to proposed activities that threaten major environmental harm which cannot be prevented or mitigated appropriately.

The Mining Law itself is utterly silent on environmental regulation. While it is the case that operations carried out under it no longer escape regulation, thanks to laws like the Clean Water Act, these other laws do not comprehensively address the myriad of environmental threats posed by hardrock mining (such as groundwater depletion and pollution and disruption of wildlife habitat), nor do they weigh the value of mining against other values and uses of the public lands. The hardrock mining industry has long used the silence of the Mining Law on such issues to stoutly contest the reach of the government's authority over its activities.

The industry has long had powerful allies in the government on these matters. For example, just within the last few years my two immediate successors as Solicitor of the Interior Department issued legal opinions agreeing with the industry that the Mining Law hamstrings government authority. One concluded that the government lacks authority to say no to Mining Law hardrock mining operations proposed for the public lands even if they pose huge threats to the environment. Another concluded that the Mining Law gives the mining industry the right to use as much public land as it thinks it needs as a dumping ground for the residue of its vast hardrock operations—operations which these days can involve hundreds of millions of tons of waste from gigantic open pits several miles across and a mile or more deep. It is no wonder that the federal land management agencies continue to feel cowed when they contemplate exercising regulatory controls over this industry.

Mining is a dirty business, and must be carefully controlled to prevent environmental disasters. History teaches not only that things can go bad with hardrock mining operations, but when they do, the costs to repair the damage can be enormous. Well over a century of mining under the Mining Law of 1872 has saddled the Nation's taxpayers with a cleanup cost for thousands of abandoned mines that, according to some estimates, approaches fifty billion dollars. While the industry is now subject to some regulation, bad things still happen. Montana and U.S. taxpayers are paying millions of dollars to clean up the Zortman-Landusky mine in Montana—a mine which was approved under so-called "modern" regulatory standards that the industry argues are adequate and don't need strengthening.

It is long past time to close these regulatory loopholes and eliminate these ambiguities so as to make clear to all in the industry—as well as to federal land managers—that the hardrock mining industry will be held to the same standards, and be subject to the same kinds of regulatory authority, that apply to all other users of the public lands.

About fourteen years ago, the House of Representatives handily approved a comprehensive reform proposal introduced by Chairman Rahall and others. That effort nearly succeeded, failing in the last hours of the 103rd Congress. In the years since then, much has changed. Today, Mining Law reform is both more imperative and, in my judgment, more achievable. I'd like to take a few moments to explain why.

First, the industry structure, operations and economic impact have evolved considerably. The domestic hardrock industry now produces much more gold than it ever did—the U.S. is the third leading producer in the world. And the industry is heavily concentrated, with many fewer companies and many fewer mines than ever before. More than four-fifths of U.S. gold production now comes from a single state—Nevada. The four largest mines, all in Nevada, account for well over half the total domestic production. The thirty biggest mines (more than half in Nevada, including twelve of the fifteen largest) yield 99% of total production. Barrick Gold, a Canadian company, is the biggest, accounting for about 40% of domestic U.S. (and 8% of world) gold production. Production of copper and other precious metals are similarly

concentrated. Moreover, the hardrock industry now operates with such ruthless efficiency that it employs far fewer people than it used to. Its workers may be relatively well-paid, but they are far fewer in number and much more geographically concentrated than they ever were.

In the meantime, the economies of the western states have evolved rapidly away from their historic roots dependent on resource extraction. Today the regional economy where the Mining Law applies—the western states in the lower 48 plus Alaska—has changed dramatically. While mining used to be a dominant industry in many western locales, today in most places its impact is small, even minuscule. The west is now the most urban and fastest growing region in the country. Moreover, its dynamic growth and economic health are fundamentally linked to the quality of life provided by the open spaces and recreational amenities of the public lands.

As a result, the politics of the region have changed at the ground level. Westerners are increasingly unsympathetic to the idea that the hardrock mining industry deserves these special exemptions from the laws and policies that apply to everyone else. It is not surprising, then, that when the mining industry seeks to exploit its favored position under the Mining Law, more and more local people—ranchers, hunters, anglers, retirees, land developers, tourist industry officials, municipal water providers and other local government officials—are asking why this nineteenth century policy still exists. And their concerns are growing because soaring mineral prices, particularly for gold, copper and uranium, have led to a new rush of claimstaking under the Mining Law in areas with high values for other uses.

People in the west are also more familiar than most with the consequences of failing to control the industry. They live with the thousands of abandoned mines scattered throughout the region, and are familiar with the sorry legacy of polluted streams and disrupted landscapes that will require billions of dollars to repair. And they resent the fact that, under the current regime, the dollars to pay for this cleanup will come more from taxpayers than from the industry that created the mess.

Another noteworthy change in recent years is that, for the first time, the hardrock mining industry is facing some pressure to reform from the demand side—the jewelry industry that consumes much of its product. With leadership from Tiffany and other major jewelers, this movement has helped persuade some major mining companies, concerned about their reputations as well as their impacts, to work to improve their practices and make other accommodations to modern social and environmental values. In short, the industry is no longer so monolithic and so reflexively hostile to change.

It bears repeating that the H.R. 2262's reforms do no more than put in place practices and policies that oil and gas operators, coal miners, electrical utilities, ski areas, and other intensive users of the federal lands have operated under quite successfully for decades. I have no doubt that the innovative, progressive companies in this industry—and there are some, who have flourished around the world by being so—will adapt readily to such reforms, just like other public land users have.

I am also confident that reforming the archaic Mining Law will not—as some industry spokespeople have ritually maintained—put an end to the domestic hardrock mining industry. Every year Canada's Fraser Institute surveys mining industry executives and uses the results to rank the most favorable jurisdictions in the world for hardrock mining, considering a variety of factors, including political stability. The American West is always at or near the top of the rankings. Furthermore, skyrocketing mineral prices means the industry is thriving as never before, and any modest increase in production costs that might result from reforms like H.R. 2262 can readily be absorbed.

Once again, I commend your leadership for taking up this important issue. You have the best opportunity in a generation to achieve a landmark legacy in public land policymaking. I stand ready to help any way I can to move this forward, and I would be happy to answer any questions you may have.

Mr. COSTA. Thank you again, Mr. Leshy, Professor Leshy.

And our next witness is Ms. Robin Nazzaro, Director of the Natural Resources and Environmental Division of the U.S. Government Accountability Office. Ms. Nazzaro, please open on your testimony.

STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. NAZZARO. Thank you, Mr. Chairman, and Mr. Lamborn. I am pleased to be here today to discuss GAO's work on several hardrock mining issues that are central to the debate on reforming the General Mining Act of 1872.

The Act helped open the West by allowing individuals to obtain exclusive rights to billions of dollars worth of gold, silver, and other hardrock minerals from Federal lands without having to pay a royalty.

Most of these lands are managed by the Department of the Interior's Bureau of Land Management, and the Department of Agriculture's Forest Service. In addition to not requiring operators to pay royalties prior to 1981, the BLM did not require them to reclaim the Federal land they used, leaving environmental and physical safety hazards.

In 1981, BLM began requiring mine operators to reclaim the BLM land disturbed by these operations, and in 2001, began requiring operators to provide financial assurances to cover reclamation costs before they began exploration or mining.

My testimony today focuses on the royalty states charge, the number of abandoned hardrock mine sites and hazards, and the value and coverage of financial assurances operators use to guarantee reclamation costs.

All 12 western states assess royalties on hardrock mining operations on state lands. In addition, each of these states, except Oregon, assesses taxes that function like a royalty, which I will refer to as functional royalties, on the hardrock mining operations on private, state, and Federal lands.

The royalties the states assess often differ depending on land ownership. For example, for private mining operations conducted on Federal, state, and private land, Arizona assesses a functional royalty of 1.25 percent of net revenue on gold mining operations, and an additional royalty of at least two percent of gross value for gold mining operations on state lands.

In addition, 9 of the 12 states assess different types of royalties for different types of minerals. Wyoming, for example, employs three different functional royalties for all lands; net smelter returns for uranium, a different net smelter return for trona, and a gross revenue for all other minerals.

The royalties the states assess often differ in the allowable exclusions deductions and limitations as well. In Colorado, a functional royalty on metallic mining excludes gross incomes below $19 million; whereas, in Montana, a functional royalty on metallic mining is applied on all mining operations after the first $250,000 of revenue.

The actual amount of assessed for a particular mine may also depend on other factors, such as mineral's processing requirements, mineral markets, mine efficiency, and the mine location relative to markets.

Prior estimates on the number of abandoned hardrock mine sites have varied widely, in part because there is no generally accepted definition of a hardrock mine site. Using a consistent definition

that we provided to the 12 western states, as well as South Dakota, estimated the number of hardrock mine sites in their states.

From this information, we estimated a total of at least 161,000 abandoned hardrock mine sites in these states on state, private, and Federal lands. These sites have at least 332,000 features that may pose physical safety hazards, such as open shafts, or unable, or decayed mine structures, and at least 33,000 sites have degraded the environment by, for example, contaminating surface water and ground water, or leaving arsenic-contaminated tailings.

Between Fiscal Years 1998 and 2007, BLM and the Forest Service have spent a total of about $260 million in 2008 constant dollars to reclaim abandoned hardrock mines. As I noted earlier, all operators are provided to provide financial assurances to guarantee funding for reclamation costs if the operator did not complete the task.

However, according to BLM's information on financial assurances, 52 of the 1,463 hardrock mining operations on its lands had financial assurances valued at about $28 million less than needed to fully recover estimated reclamation costs.

We determined that the assurances for these 52 operations should more accurately be reported at about $61 million less than needed for full coverage. The difference between GAO and BLM's estimated shortfall occurs between BLM calculated its shortfall by comparing the total value of financial assurances in place with the total estimated reclamation costs.

This approach effectively offset the shortfalls in some operations with the financial assurances of others. GAO has followed up with BLM and has taken steps to correct its reporting on the adequacy of financial assurances.

In conclusion, for decades GAO has reported on the need to reform the General Mining Act of 1872. Assessing a royalty on hardrock minerals would ensure that the public is compensated for hardrock minerals extracted from Federal lands as more recent enacted laws require for oil, gas, and other minerals.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions.

[The prepared statement of Ms. Nazzaro follows:]

Statement of Robin M. Nazzaro, Director, Natural Resources and Environment, U.S. Government Accountability Office

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss our 2008 work on several hardrock mining issues that are central to the debate on reforming the General Mining Act of 1872: royalties, abandoned mines, and financial assurances. [1]

As you know, since the passage of the General Mining Act of 1872, mine operators have extracted billions of dollars worth of silver, gold, copper, and other hardrock (locatable) minerals from federal lands without having to pay a royalty. [2] Most of

[1] GAO, Hardrock Mining: Information on State Royalties and Trends in Mineral Import and Exports, GAO-08-849R (Washington, D.C.: July 21, 2008); and GAO, Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land, GAO-08-574T (Washington, D.C.: Mar. 12, 2008).

[2] Under U.S. mining laws, minerals are classified as locatable, leasable, or saleable. Locatable minerals include those minerals that are not leasable or saleable, for example, copper, lead, zinc, magnesium, gold, silver, and uranium. Only locatable minerals continue to be "claimed" under the Mining Act. For the purposes of this report, we use the term "hardrock minerals" as a synonym for "locatable minerals." Leasable minerals include, for example, oil, gas, and coal. The Mineral Leasing Act of 1920, 41 Stat. 437 (codified at 30 U.S.C. § 181) created a leasing system for coal, gas, oil and other fuels, and chemical minerals. Saleable minerals include, for example,

these lands are managed by the Department of the Interior's Bureau of Land Management (BLM) and the U.S. Department of Agriculture's Forest Service. Assessing a royalty on hardrock minerals would ensure that the public is compensated for hardrock minerals extracted from federal lands, as more recently enacted laws require for oil, gas, and other minerals.

The vast majority of the federal lands where hardrock mining operations occur are in 12 western states, including Alaska (hereafter referred to as the 12 western states).[3] These western states have statutes governing hardrock mining operations on lands in their state. However, unlike the federal government, these states charge royalties that allow them to share in the proceeds from hardrock minerals extracted from state-owned lands. In addition, most of these states charge taxes, such as severance taxes, mine license taxes, or resource excise taxes, on hardrock mining operations that occur on private, state, and federal lands. For the purposes of this report, we use the term "functional royalty" to refer to taxes that function like a royalty in that they permit the state to share in the value of the mine's production. Although states may use similar names for functional royalties they assess, there can be wide variations in their forms and rates.

In addition to not requiring hardrock mining operators to pay royalties, prior to 1981, BLM did not require them to reclaim the federal land they used. Consequently, hardrock mining operators have left thousands of acres of federal land disturbed through mineral exploration, mining, and mineral processing. Some of these disturbed abandoned mine lands pose serious environmental and physical safety hazards. These hazards include environmental hazards such as toxic or acidic water that contaminates soil and groundwater or physical safety hazards such as open or concealed shafts, unstable or decayed mine structures, or explosives. Cleanup costs for these abandoned mines vary by type and size of the operation.[4]

To curb further growth in the number of abandoned hardrock mines, BLM issued regulations, effective in 1981, that required all mining operators to reclaim BLM land disturbed by hardrock mining. In 2001, BLM began requiring all mining operators to provide financial assurances before beginning exploration or mining operations on BLM land. These financial assurances must cover all of the estimated reclamation costs for a given hardrock operation. Having adequate financial assurances to pay reclamation costs for BLM land disturbed by hardrock operations is critical to ensuring that the land is reclaimed if the mining operators fail to do so. In June 2005, we reported that some current hardrock operations on BLM land do not have financial assurances, and some have no or outdated reclamation plans and/or cost estimates on which the financial assurances should be based.[5]

My testimony today focuses on the (1) royalties states currently charge on hardrock mining operations, (2) the number of abandoned hardrock mine sites and number of associated hazards, and (3) value and coverage of the financial assurances operators use to guarantee reclamation costs on lands managed by BLM.

To address these objectives, we interviewed staff at BLM and the Forest Service; examined agency documents and data; and reviewed relevant legislation and regulations. To identify the types of royalties, including functional royalties that the 12 western states assess on hardrock mining operations, we reviewed state statutes and regulations pertaining to royalties on hardrock mining operations. To aid in understanding general patterns in state royalties, we consulted academic and industry sources and then we categorized each royalty according to how it is assessed. To assess the number of abandoned hardrock mine sites, we asked the 12 western states and South Dakota—which have significant numbers of abandoned hardrock mining operations—to determine the number of these mine sites in their states. We asked the states to use a consistent definition, which we provided, in estimating the number of abandoned mine sites and associated features that pose a significant hazard to public health and safety and the number of sites that cause environmental deg-

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common sand, stone, and gravel. In 1955, the Multiple Use Mining Act of 1955, 69 Stat. 367 (codified at 30 U.S.C. § 601) removed common varieties of sand, stone, and gravel from development under the Mining Act.

[3] The other 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

[4] For purposes of this testimony, cleanup refers to the mitigation of environmental impacts at mine sites, such as contaminated water, and the reclamation of land disturbed by hardrock operations.

[5] GAO, Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs, GAO-05-377 (Washington, D.C.: June 20, 2005).

radation.[6] We specified that states should only include hardrock (also known as locatable), non-coal sites in this estimate. From these data, we estimated the number of features that pose physical safety hazards and the number of sites with environmental hazards in the 12 western states. We also summarized six selected survey efforts by federal agencies and organizations to document differences in estimates, definitions, and methodologies. To assess the value and coverage of financial assurances in place to guarantee reclamation, we reviewed BLM's Bond Review Report. This report provides information on financial assurances for 11 western states.[7] This Bond Review Report is generated from BLM's automated information system—LR 2000. Although the LR2000 data are of undetermined reliability, our limited assessment of these data indicates that they are appropriate as used and presented in this testimony, and we do not base any conclusions or recommendations on them. This testimony is based on prior GAO reports whose work was conducted in accordance with generally accepted government auditing standards.[8] Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The 12 Western States Assess Multiple Types of Royalties, Including Functional Royalties, on Mining Operations

Twelve western states assess royalties on the hardrock mining operations on state lands. In addition, each of these states, except Oregon, assesses taxes that function like a royalty, which we refer to as functional royalties, on the hardrock mining operations on private, state, and federal lands. To aid in the understanding of royalties, including functional royalties, the royalties are grouped as follows:

- Unit-based is typically assessed as a dollar rate per quantity or weight of mineral produced or extracted, and does not allow for deductions of mining costs.
- Gross revenue is typically assessed as a percentage of the value of the mineral extracted and does not allow for deductions of mining costs.
- Net smelter returns is assessed as a percentage of the value of the mineral, but with deductions allowed for costs associated with transporting and processing the mineral (typically referred to as mill, smelter, or treatment costs); however, costs associated with extraction of the mineral are not deductible.
- Net proceeds is assessed as a percentage of the net proceeds (or net profit) of the sale of the mineral with deductions for a broad set of mining costs. The particular deductions allowed vary widely from state to state, but may include extraction costs, processing costs, transportation costs, and administrative costs, such as for capital, marketing, and insurance.[9]
- Royalties, including functional royalties, often differ depending on land ownership and the mineral being extracted, as the following illustrates:
- For private mining operations conducted on federal, state, or private lands, Arizona assesses a net proceeds functional royalty of 1.25 percent on gold mining operations, and an additional gross revenue royalty of at least 2 percent for gold mining operations on state lands.
- Nine of the 12 states assess different types of royalties for different types of minerals. For example, Wyoming employs three different functional royalties for all lands: (1) net smelter returns for uranium, (2) a different net smelter returns for trona—a mineral used in the production of glass, and (3) gross revenue for all other minerals.

Furthermore, the royalties the states assess often differ in the allowable exclusions, deductions, and limitations.[10] For example, in Colorado, a functional royalty on metallic mining excludes gross incomes below $19 million,[11] whereas in Montana a functional royalty on metallic mining is applied on all mining operations after the first $250,000 of revenue.[12]

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[6] We defined an abandoned hardrock mine site as all associated facilities, structures, improvements, and disturbances at a distinct location associated with activities to support a past operation under the general mining laws.

[7] Data for Alaska are not maintained in LR2000 and not reported in the Bond Review Report.

[8] GAO-08-849R and GAO-08-574T.

[9] For a full discussion of the definition and formula for each type of royalty, see GAO-08-849R.

[10] For a complete listing of exclusions, deductions, and limitations, see GAO-08-849R, encl. II, table 3.

[11] Gross income is the value of ore immediately after its removal from the mine and does not include any value added subsequent to mining by any treatment processes.

[12] Gross value of product, less first $250,000; Gross value is the receipts received from the sale of concentrates or metals extracted from mines or recovered from the smelting, milling, reduc-

Finally, the actual amount assessed for a particular mine may depend not only on the type of royalty, its rate, and exclusions, but also on such factors as the mineral's processing requirements, mineral markets, mine efficiency, and mine location relative to markets, among other factors.

Table 1 shows the types of royalties, including functional royalties, that the 12 western states assess on all lands, including federal, state, and private lands, as well as the royalties assessed only on state lands.

Table 1: Types of Royalties, Including Functional Royalties, Assessed on Hardrock Mining Operations in Western States, by State

State	Unit-based	Gross revenue	Net smelter returns	Net proceeds
Alaska				
State lands				
All lands				
Arizona				
State lands				
All lands				
California				
State lands				
All lands				
Colorado				
State lands				
All lands	–			
Idaho				
State lands				
All lands				
Montana				
State lands				
All lands				
Nevada[a]				
State lands				
All lands				–
New Mexico				
State lands				
All lands				
Oregon				
State lands				
All lands				
Utah				
State lands				
All lands				
Washington				
State lands				
All lands		–		
Wyoming				
State lands	–	–		
All lands				
Total				
State lands	**2**	**10**	**3**	**3**
All Lands	**3**	**5**	**3**	**6**

Source: GAO analysis of state statutes and regulations.

Note: Sales and use taxes are excluded. Royalties often apply only to specific minerals.

[a]Nevada also has royalty on hardrock mining operations on state lands, however it is unlike these four categories of royalties.

tion, or treatment of such ores. Receipts received is defined as the payment received, less allowable deductions.

Prior State Estimates of the Number of Abandoned Hardrock Mine Sites Vary Widely, but Our Data Show at Least 161,000 Sites, with Many Posing Hazards

It has been difficult to determine the number of abandoned hardrock mine sites in the 12 western states, and South Dakota, in part because there is no generally accepted definition for a hardrock mine site. The six studies we reviewed relied on the different definitions that the states used, and estimates varied widely from study to study. [13]

Furthermore, BLM and the Forest Service have had difficulty determining the number of abandoned hardrock mines on their lands. In September 2007, the agencies reported an estimated 100,000 abandoned mine sites, [14] but we found problems with this estimate. For example, the Forest Service had reported that it had approximately 39,000 abandoned hardrock mine sites on its lands. However, this estimate includes a substantial number of non-hardrock mines, such as coal mines, and sites that are not on Forest Service land. At our request, the Forest Service provided a revised estimate of the number of abandoned hardrock mine sites on its lands, excluding coal or other non-hardrock sites. According to this estimate, the Forest Service may have about 29,000 abandoned hardrock mine sites on its lands. That said, we still have concerns about the accuracy of the Forest Service's recent estimate because it identified a large number of sites with "undetermined" ownership, and therefore these sites may not all be on Forest Service lands.

BLM has also acknowledged that its estimate of abandoned hardrock mine sites on its lands may not be accurate because it includes sites on its lands that are of unknown or mixed ownership (state, private, and federal) and a few coal sites. In addition, BLM officials said that the agency's field offices used a variety of methods to identify sites in the early 1980s, and the extent and quality of these efforts varied greatly. For example, they estimated that only about 20 percent of BLM land has been surveyed in Arizona. Furthermore, BLM officials said that the agency focuses more on identifying sites closer to human habitation and recreational areas than on identifying more remote sites, such as in the desert. Table 2 shows the Forest Service's and BLM's most recent available estimates of abandoned mine sites on their lands.

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[13] For a full discussion of these six studies, see GAO-08-574T, app. III.

[14] BLM and Forest Service, Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines (September 2007).

Table 2: BLM's and the Forest Service's Most Currently Available Estimated Number of Abandoned Mines on Their Lands, by State

State	Estimated number of abandoned mine sites on BLM land[a]	Estimated number of abandoned mine sites on Forest Service land[b]	Total
Alaska	6,000	830	**6,830**
Arizona	22,000	2,183	**24,183**
California	11,500	6,248	**17,748**
Colorado	2,500	2,605	**5,105**
Idaho	400	4,635	**5,035**
Montana	1,016	3,899	**4,915**
Nevada	9,000	1,613	**10,613**
New Mexico	3,000	989	**3,989**
Oregon	3,400	2,427	**5,827**
South Dakota	Not reported	503	**503**
Utah	10,000	697	**10,697**
Washington	Not reported	1,956	**1,956**
Wyoming	2,000	336	**2,336**
Total	**70,816**	**28,921**	**99,737**

Source: GAO analysis of BLM and Forest Service data.

[a]These data are from BLM's Abandoned Mine Land Inventory and Remediation Report, BLM/NV/GI-97/004, November 1996.

[b]These data are from the U.S. Geological Survey's analysis of data in the Mineral Resources Data System (of which the Mineral Availability System/Mineral Industry Locator System is now a part), revised by the Forest Service as of November 2007.

To estimate abandoned hardrock mine sites in the 12 western states and South Dakota, we developed a standard definition for these mine sites. In developing this definition, we consulted with mining experts at the National Association of Abandoned Mine Land Programs; the Interstate Mining Compact Commission; and the Colorado Department of Natural Resources, Division of Reclamation, Mining and Safety, Office of Active and Inactive Mines. We defined an abandoned hardrock mine site as a site that includes all associated facilities, structures, improvements, and disturbances at a distinct location associated with activities to support a past operation, including prospecting, exploration, uncovering, drilling, discovery, mine development, excavation, extraction, or processing of mineral deposits locatable under the general mining laws. We also asked the states to estimate the number of features at these sites that pose physical safety hazards and the number of sites with environmental degradation.

Using this definition, states reported to us the number of abandoned sites in their states, and we calculated that there are at least 161,000 abandoned hardrock mine sites in their states. At these sites, on the basis of state data, we estimated that at least 332,000 features may pose physical safety hazards, such as open shafts or unstable or decayed mine structures. Furthermore, we estimated that at least 33,000 sites have degraded the environment, by, for example, contaminating surface and ground water or leaving arsenic-contaminated tailings piles.[15] Table 3 shows our estimate of the number of abandoned hardrock mine sites in the 12 western states and South Dakota, the number of features that pose significant public health and safety hazards, and the number of sites with environmental degradation.

[15]Tailings are a combination of fluid and rock materials that are left behind after the minerals are extracted. Tailings are often disposed of in a nearby pile.

Table 3: GAO's Estimate of the Number of Abandoned Hardrock Mine Sites, Features That Pose Significant Public and Safety Hazards, and Sites With Environmental Degradation, in 12 Western States and South Dakota, as of October 1, 2007

State	Estimated number of abandoned hardrock (non-coal, locatable) mine sites	Estimated number of features that pose a significant hazard to public health and safety	Estimated number of sites with environmental degradation
Alaska	469	235	99
Arizona	50,000	59,400	9,900
California	47,084	164,795	5,200
Colorado	7,300	17,000	150
Idaho	7,100	Not reported	Not reported
Montana	6,000	6,000-22,000	331
Nevada	16,000	51,000	150
New Mexico	800	15,000	200-300
Oregon	3,823	Not reported	140
South Dakota	950	Not reported	Not reported
Utah	17,000	17,000	17,000
Washington	3,629	1,608	50
Wyoming	956	519	437
Total	**161,111**	**332,557-348,557**	**33,657-33,757**

Source: GAO analysis of state-reported data.

Notes: While states used our definition to provide data on the estimated number of mine sites and features, these data have two key limitations: (1) the methods and sources used to identify and confirm abandoned sites and hazardous features vary substantially by state and (2) states have markedly different data systems and requirements for recording data on abandoned mines. For complete information on these limitations, see GAO-08-574T.

BLM Estimates That Operators Have Provided About $982 Million in Financial Assurances—About $61 Million Less Than Needed to Cover Estimated Reclamation Costs

As of November 2007, hardrock mining operators had provided financial assurances valued at approximately $982 million to guarantee the reclamation cost for 1,463 hardrock mining operations on BLM land in 11 western states, according to BLM's Bond Review Report.[16] The report also indicates that 52 of the 1,463 hardrock mining operations had inadequate financial assurances"e i95about $28 million less than needed to fully cover estimated reclamation costs. We determined, however, that the financial assurances for these 52 operations should be more accurately reported as about $61 million less than needed to fully cover estimated reclamation costs. Table 4 shows total operations by state, the number of operations with inadequate financial assurances, the financial assurances required, BLM's calculation of the shortfall in assurances, and our estimate of the shortfall, as of November 2007.

Table 4: Total Hardrock Mining Operations, Operations with Inadequate Financial Assurances, Financial Assurances Required, and Difference Between Requirements and Actual Value, by State, as of November 2007

State	Total operations	Operations with inadequate financial assurances	Financial assurances required	BLM's difference between current and required value of financial assurances	GAO's difference between current and required value of financial assurances
Arizona	107	2	$7,689,394	($49,583)	($101,870)
California	95	4	24,530,439	1,593,013	(439,669)
Colorado	250	4	1,605,574	(170,291)	(167,730)
Idaho	46	1	1,556,705	(13,000)	(13,000)
Montana	41	0	67,478,064	1,200	0
New Mexico	28	0	1,066,735	0	0
Nevada	579	28	844,953,161	(33,667,684)	(47,739,814)
Oregon	60	4	366,773	47,327	(1,227)
Utah	150	5	12,247,645	(2,682,539)	(2,769, 802)
Washington	4	0	49,975	0	0
Wyoming	103	4	47,934,110	7,103,396	(9,518,877)
Total	**1,463**	**52**	**$1,009,478,575**	**($27,838,161)**	**($60,751,989)**

Source: GAO analysis of BLM's Bond Review Report.

The $33 million difference between our estimated shortfall of nearly $61 million and BLM's estimated shortfall of nearly $28 million occurs because BLM calculated its shortfall by comparing the total value of financial assurances in place with the

[16] Data for Alaska are not maintained in LR2000 and not reported in the Bond Review Report.

total estimated reclamation costs. This calculation approach has the effect of offsetting the shortfalls in some operations with the greater than required financial assurances of other operations. However, the financial assurances that are greater than the amount required for an operation cannot be transferred to an operation with inadequate financial assurances. In contrast, we totaled the difference between the financial assurance in place for an operation and the financial assurances needed for that operation to determine the actual shortfall for each of the 52 operations for which BLM had determined that financial assurances were inadequate.

BLM's approach to determining the adequacy of financial assurances is not useful because it does not clearly lay out the extent to which financial assurances are inadequate. For example, in California, BLM reported that, statewide, the financial assurances in place were $1.5 million greater than required as of November 2007, suggesting reclamation costs are being more than fully covered. However, according to our analysis of only those California operations with inadequate financial assurances, the financial assurances in place were nearly $440,000 less than needed to fully cover reclamations costs. BLM officials agreed that it would be valuable for the Bond Review Report to report the dollar value of the difference between financial assurances in place and required for those operations where financial assurances are inadequate and have taken steps to modify LR2000.

BLM officials said that financial assurances may appear inadequate in the Bond Review Report when

- expansions or other changes in the operation have occurred, thus requiring an increase in the amount of the financial assurance;
- BLM's estimate of reclamation costs has increased and there is a delay between when BLM enters the new estimate into LR2000 and when the operator provides the additional bond amount; and
- BLM has delayed updating its case records in LR2000.

Conversely, hardrock mining operators may have financial assurances greater than required for a number of reasons; for example, they may increase their financial assurances because they anticipate expanding their hardrock operations.

In addition, according to the Bond Review Report, there are about 2.4 times as many notice-level operations—generally, operations that cause surface disturbance on 5 acres or less—as there are plan-level operations on BLM land—generally operations that disturb more than 5 acres (1,033 notice-level operations and 430 plan-level operations). However, about 99 percent of the value of financial assurances is for plan-level operations, while 1 percent of the value is for notice-level operations. While financial assurances were inadequate for both notice- and plan-level operations, a greater percentage of plan-level operations had inadequate financial assurances than did notice-level operations—6.7 percent and 2.2 percent, respectively. Finally, over one-third of the number of all hardrock operations and about 84 percent of the value of all financial assurances are for hardrock mining operations located in Nevada.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Committee may have.

February 26, 2009

GAO Highlights

Highlights of GAO-09-429T, a testimony before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives

HARDROCK MINING

Information on Types of State Royalties, Number of Abandoned Mines, and Financial Assurances on BLM Land

Why GAO Did This Study

The General Mining Act of 1872 helped open the West by allowing individuals to obtain exclusive rights to mine billions of dollars worth of gold, silver, and other hardrock (locatable) minerals from federal lands without having to pay a federal royalty. However, western states charge royalties so that they share in the proceeds from various hardrock minerals extracted from their lands. For years, some mining operators did not reclaim land used in their mining operations, creating environmental and physical safety hazards. To curb further growth in the number of abandoned hardrock mines on federal lands, in 1981, the Department of the Interior's Bureau of Land Management (BLM) began requiring mining operators to reclaim BLM land disturbed by these operations, and in 2001 began requiring operators to provide financial assurances to cover reclamation costs before they began exploration or mining operations.

This testimony focuses on the (1) royalties states charge, (2) number of abandoned hardrock mine sites and hazards, and (3) value and coverage of financial assurances operators use to guarantee reclamation costs. It is based on two GAO reports: *Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land*, GAO-08-574T (Mar. 12, 2008) and *Hardrock Mining: Information on State Royalties and Trends in Imports and Exports,* GAO-08-849R (July 21, 2008).

To view the full product, including the scope and methodology, click on GAO-09-429T. For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

What GAO Found

Twelve western states, including Alaska, that GAO reviewed assess royalties on hardrock mining operations on state lands. In addition, each of these states, except Oregon, assesses taxes that function like a royalty, which GAO refers to as functional royalties, on the hardrock mining operations on private, state, and federal lands. The royalties the states assess often differ depending on land ownership and the mineral being extracted. For example, for private mining operations conducted on federal, state, or private land, Arizona assesses a functional royalty of 1.25 percent of net revenue on gold mining operations, and an additional royalty of at least 2 percent of gross value for gold mining operations on state lands. The actual amount assessed for a particular mine may depend not only on the type of royalty, its rate, and exclusions, but also on other factors, such as the mine's location relative to markets.

Over the past 10 years, estimates of the number of abandoned hardrock mine sites in the 12 western states reviewed, as well as South Dakota, have varied widely, in part because there is no generally accepted definition for a hardrock mine site. Using a consistent definition that GAO provided, these states reported the number of abandoned sites in their states. On the basis of these data, GAO estimated that there are at least 161,000 abandoned hardrock mine sites in these states, and these sites have at least 332,000 features that may pose physical safety hazards and at least 33,000 sites that have degraded the environment.

According to BLM data, as of November 2007, hardrock mining operators had provided financial assurances worth approximately $982 million to guarantee reclamation costs for 1,463 hardrock mining operations on BLM land and 52 of these operations had financial assurances valued at about $28 million less than needed to fully cover estimated reclamation costs. However, GAO determined that the assurances for these 52 operations should be more accurately reported as about $61 million less than needed for full coverage. The $33 million difference between GAO's and BLM's estimated shortfalls occurs because BLM calculated its shortfall by comparing the total value of financial assurances in place with the total estimated reclamation costs. This approach effectively offsets the shortfalls in some operations with the higher than needed financial assurances of others. However, the financial assurances that are greater than the amount required for an operation cannot be transferred to an operation with inadequate financial assurances. In contrast, GAO totaled the difference between the financial assurances in place for an operation and the financial assurances needed for that operation to determine the actual shortfall for each of the 52 operations for which BLM had determined that financial assurances were inadequate. BLM has taken steps to correct the reporting problem GAO identified.

Mr. COSTA. Very good. Thank you very much for your testimony, and we will move on to the next witness, Mr. James "J.T." Reynolds, former Superintendent of Death Valley National Park, in California.

We are pleased that you are here, Mr. Reynolds, and would love to hear your comments. It is a part of California that I am a little bit familiar with, and it is truly one of California's and our Nation's important treasures. So, please open on your testimony.

STATEMENT OF JAMES REYNOLDS, SUPERINTENDENT [2001-2008] DEATH VALLEY NATIONAL PARK, CALIFORNIA, NATIONAL PARK SERVICE

Mr. REYNOLDS. Good morning, Mr. Chairman, Members, and others. I am honored to have the opportunity to share with you why H.R. 699 will be the much needed law to help managers like me in protecting park resources and protecting the visitors who come to enjoy these resources.

Death Valley has over 1,700 mining claims within five miles of its boundary, and over twenty-six hundred within ten miles. The total number around National Park Service areas within five miles is approximately seventy-one hundred, and within ten miles, approximately 12,000, and many of these are within the boundaries of National Park Service areas.

My written testimony includes quite a bit more information about how over 100 years of mining history has been included in the mission of the National Park Service in parks like Death Valley and other Park Service areas.

I often advise folks, especially middle-school kids, and their teachers, that National Park Service areas include the libraries and cathedrals that tell the stories of our country's history, the places where real artifacts are housed and books are written about these things.

One of the National Park's missions is to preserve and protect these artifacts for future generations. Death Valley is one of those places where this mining history is housed.

I will also advise that the dedicated employees do the best that they can with the inadequate funds and the staff. The outdated laws and policies only make this job even more difficult, even when we partner with others and share resources.

As you have heard from others, the 1872 Mining Law is inadequate and do these historic artifacts and visitors great harm. If we pass H.R. 699, this bill will ensure that our country's mining history, past and present, will be better protected.

It will also ensure that we will protect the millions of visitors who come to learn and enjoy these resources and their environment. Section 309 specifically addresses national parks and national monuments.

It will ensure that if mining activities impair scenic cultural and natural resources, and other assets like water and air quality, these mining activities will not be allowed.

This bill also includes sections in all five titles that will improve how we do business, and better protect our resources, as well as protect our citizens and other visitors from the hazards created from over 100 years of mining activities.

The techniques used in these mining activities, past and present, create unstable slopes on mountains, the mining shafts collapse under the weight of vehicles and people. The techniques to extract gold and silver from the ore leaves cyanide, lead, mercury, and other toxic chemicals in the soil and on the ground to be washed away to contaminate surface and ground water.

The wind blows these contaminants, therefore polluting the air that visitors and employees breathe. Many of the historic mining

features that tell the stories, and become more unstable, where many collapse due to rot and lack of maintenance.

Our visitors are moving about these unsafe areas, and some are injured, and some die. If we had a more consistent funding source dedicated to stabilizing, cleaning up, and reclaiming these sites, we could provide the more safe and enjoyable place for visitors to enjoy, and for future generations to learn about their history.

The reclamation fund proposed in H.R. 699 is a great start in protecting our history for our kids. In closing, I want to stress that these resources need our help yesterday. Our generation must step up and ensure that we do not let our future generations down, and that they will not have to visit these unsafe issues again, at least anytime soon.

Park areas, tribes, and town citizens are being subjected to the hazards of mining activities as we speak. I just want to thank you all for allowing me to share, and I hope that my written and oral testimony will add value to the process, and why it is imperative that H.R. 699 is passed.

[The prepared statement of Mr. Reynolds follows:]

Statement of James T. Reynolds, Superintendent (2001-2008), Death Valley National Park, California

On this 26th day of February 2009, I James T. Reynolds, a member of the Coalition of National Park Service Retirees, former superintendent of Death Valley National Park, and recently retired, 2 January 2009, am here to testify before the Subcommittee on Energy and Mineral Resources Legislative Hearing on H.R. 699, the Hardrock Mining and Reclamation Act of 2009.

Good Morning Mr. Chairman, members of the committee, and others. I am honored to share information to add value that will be most beneficial to the Committee who will draft a final bill that will reform the governance of hardrock mining on public lands, as carried out under the Mining Law of 1872.

The Death Valley Region is recognized for its rich natural and cultural diversity. Native people have inhabited this region for thousands of years, and their descendents continue to live and call this area home. In the mid to late 1800's, native peoples were pushed out of the area by mining companies and the federal government. The remnants of this history still exist today. This human history is enveloped by beautiful extremes, craggy soaring peaks, deep chasms, golden sand dunes, a variety of unusual wildlife and uncommon plants, and a myriad of other hidden treasures to experience.

The mining industry helped to establish Death Valley as a national monument. Due to the mining activities, a monument was established rather than a national park. Horace Albright, head of the National Park Service, drew boundaries for what he wanted President Herbert Hoover to declare an American treasure. Hoover eventually designated Death Valley as a National Monument, an act that became official on February 11, 1933. It took over six decades for the Monument's status to be upgraded to National Park status in 1994, California Desert Protection Act.

Its significance is identified in the park's enabling legislation and general management plan which states that the park "has an extensive and well-preserved mining history representing over 100 years of mining technology." Death Valley is a little unusual because some of the earlier national parks were established with the assistance of the railroad industry, artist, painters and photographers.

The California Desert Protection Act, 1994 also describes how Death Valley (DEVA) will be protected and how it will mandate the preservation of historical and cultural values of the California desert associated with ancient Indian cultures, patterns of western exploration and settlement, and sites exemplifying the mining, ranching and railroading history of the Old West.

Many of these mines have important and irreplaceable historic mining artifacts, buildings and other cultural resources on site that are being looted or deteriorating at an alarming pace. Using discretionary operating funds or occasional project funds cannot begin to deal with the issue effectively and responsibly.

Current topographic maps indicate that there are approximately 3,500+ known mine features within the park, though there may be over 10,000. Certain mining

districts/sites are visited frequently by park visitors. Many of the shafts are several hundred feet deep—the safety concern for the unwary visitor is real. The staff of Death Valley and other NPS areas tries to address the significant safety hazards and the preservation of habitat for rare bat species associated with selected mine sites.

The National Park Service also educates visitors that mining and abandoned mineral lands are often part of the park scene. Mining interpretive displays and presentations are part of the program at several parks. In other parks, special regional events such as discoveries and local gold rushes are commemorated. Visitor centers often have books on mining history and folklore. Educators have recognized that parks make excellent classrooms that bring this rich mining history alive and programs are developed for selected mining districts and sites. Mining-related topics are used to enhance school curricula in history, geography, science, and even art. Some national parks and state agencies offer school outreach programs, including abandoned mineral lands safety information for children.

Many parks boast rich mining histories and are active in preserving and even reconstructing mining-related historic structures and landscapes. Three park units were established with the specific purpose of preserving the American mining heritage: Klondike Gold Rush National Historical Park, Yukon-Charley Rivers National Preserve, and Keweenaw National Historical Park. The first two of these parks commemorate the Alaskan gold rush of 1898, and the latter, established in 1992, celebrates the internationally significant copper mines in the upper Michigan peninsula. Evidence of earlier mining can also be viewed in the National Park System. Alibates Flint Quarries National Monument in Texas and Wupatki National Monument in Arizona preserve the remains of prehistoric extraction sites, and Pipestone National Monument in Minnesota protects the pipestone (red mudstone) quarries of the Yankton Sioux.

In 1849, gold was discovered in California and a rush began into the state. It is estimated that 80,000 people came to California looking for gold. As gold, silver, borax, and other minerals were discovered in Death Valley and many other areas, even miners who feared these areas, returned to look for the gold and silver potential they had seen during their nightmarish ordeal.

Beatty, Nevada, northeast of Death Valley National Park, is a good example of a modern town that went through a "boom and bust" period (Barrick Bullfrog Mining Site), over a decade ago, and may again go through something similar if a new mining company receives a permit to extract precious minerals from public or private land in the area. Many citizens may resist the mining activities that may cause some impacts. However, many will welcome the new jobs despite the consequences.

Death Valley includes many remains of towns that went through "boom and bust" periods during the late 1800's and the early 1900's. The following descriptions describe Death Valley's rich mining history, and it also describes the results of mining activities on the surrounding areas.

Now a ghost town, the Keane Wonder Mine (1906) was one of the most successful gold mines in Death Valley. Miners were following a rich vein of ore that was deposited in fractures in the metamorphic rock. Tunnels were excavated, side tunnels were added, always removing as much ore as possible. Eventually the mine became a series of chambers supported by pillars. So much material was removed that the entire mountain slope above became unstable and started to collapse. Besides the obvious danger of entering a crumbling mine, just being on the surface above or near the mine has become a safety hazard (Toxic Waste).

To extract the gold from the ore, cyanide and other toxic chemicals were used at the mill site. Not far from the visitor parking area are the remains of tanks used in the cyanide process and fine tailings that remained after processing. Preliminary testing has shown elevated levels of lead and mercury in these tailings. Erosion is constantly exposing this material and wind blows the dust around.

The historic structures of Keane Wonder Mill and tramway are suffering from rot, rust, and decay. These structures are in danger of collapse and need to be stabilized.

Until the site can be made safer—while also preserving the historic features of the site and protecting those areas used by wildlife—the National Park Service has decided to close this popular ghost town and surrounding area to public access.

Ballarat came into being in 1897 with many gold strikes in the Panamint Mountains. The Radcliffe mine alone produced 15,000 tons of gold ore from 1898-1903. The town was named after a famous Australian gold camp and was home to 400 people in 1898. Several legendary Death Valley figures lived in town. Ballarat is now privately owned and contains the ruins of several adobe buildings. The town site is located off the Panamint Valley road west of Death Valley proper.

Chloride City became a town in 1905 when the Bullfrog strike brought people into the area to re-work old mining claims. It became a ghost town the following year.

There are numerous adits and dumps in the area and one grave of a James McKay, of whom nothing is known. In addition, there are remains of 3 stamp mills. It is located off a four wheel drive road 3.5 miles east of Hell's Gate or off the dirt road 7 miles further east at the Park boundary.

Greenwater was built around a copper strike made in 1905. Water had to be hauled into the town and was sold for $15 a barrel. The town grew to a population of 2,000 and was known for its lively magazine, The Death Valley Chuckwalla. By 1909 the mining had collapsed without ever showing a profit and people left for other areas. There are no ruins left in Greenwater, which is located south of Dante's View off the Greenwater Valley gravel road.

Originally the town of Harrisburg was to be named Harrisberry after the two men who found the gold that launched it in 1905. Shorty Harris later took credit for the strike and changed the name of the town to Harrisburg after himself. Nevertheless, Pete Aguereberry, one of the original strike finders, spent 40 years working his claims in the Eureka gold mine. Harrisburg was a tent city that grew to support a population of 300. Today nothing remains of the town but Pete's home and mine which are located to the right two miles down the dirt road to Aguereberry Point.

Copper and lead claims had been filed in the Leadfield area as early as 1905 but it wasn't until 1926 that the area was heavily mined. In February of that year, Charles C. Julian, a flamboyant California promoter, became president of the town's leading mining company, the Western Lead Mines. Julian's promotions were responsible for bringing great numbers of people into the area and in April, 1926 the town was laid out with 1749 lots.

The financial downfall of Charles Julian and the playing out of lead in one of the main mines, led to the end of the town. The area is scattered with mines, dumps, tunnels and prospect holes. There are remains of wood and tin buildings, a dugout and cement foundations of the mill. The town is located on the Titus Canyon road. This is a one way high clearance unpaved road that sometimes requires 4-wheel drive.

Panamint City was called the toughest, rawest, most hard-boiled little hellhole that ever passed for a civilized town. Its founders were outlaws who, while hiding from the law in the Panamint Mountains, found silver in Surprise Canyon and gave up their life of crime. In 1874 the town was at the height of its boom with a population of 2,000 citizens. By the fall of 1875 the boom was over, and in 1876 a flash flood destroyed most of the town. The chimney of the smelter is the most prominent remnant of the town's heyday. The site of Panamint City is accessible via a 5 mile hike from Chris Wicht's Camp, which is located 6 miles northeast of the ghost town of Ballarat. Mining in the area continued on a sporadic basis up until recent times. The ruins of old Panamint City were added to Death Valley National Park in October of 1994.

Rhyolite, the "Queen City", was the largest town in the Death Valley area with a population of 5,000-10,000 people. During its heyday, from 1905-1911, it contained 2 churches, 50 saloons, 18 stores, 2 undertakers, 19 lodging houses, 8 doctors, 2 dentists, a stock exchange and an opera. The town contains numerous ruins including the Bottle House, Senator W.A. Clark's train depot, remains of a 3-story bank building, and the jail. It is on BLM land and is accessible by passenger car. Rhyolite is located 4 miles west of Beatty and 35 miles from the Death Valley Furnace Creek Visitor Center.

Skidoo was founded in 1906 when two prospectors, on their way to the Harrisburg strike, found gold. The town reached a population of 700 and became famous as the site of the only hanging to take place in Death Valley. It occurred when Hootch Simpson, a saloon owner who had fallen on hard times, tried to rob the bank, was foiled in the attempt, and later went back and killed the owner of the store in which the bank was located. During the night the townspeople hanged Hootch. According to legend, he was hanged twice. The second hanging was to accommodate news photographers who missed the first hanging. No one was ever arrested for the hanging. Skidoo is located off the Wildrose road on an unpaved high-clearance road not recommended for automobiles.

One of the most well known but short lived mines was the Harmony Borax Works, which was active from 1883-1888. This mine was made famous not for its ore deposits, but by the 20 Mule Team Wagons and the ad campaigns for the Death Valley Days radio and television programs. To help the public become familiar with the desert area, in late 1930 the Borax Company began airing its radio show, Death Valley Days. The program remained on the air for 14 years. The show's run did not end there. It ultimately became a popular TV program, which was televised for an additional 16 years, 1952 to 1968—an impressive run by virtually any standard. And the program's most famous host, Ronald Reagan, introduced it until he was elected governor of California.

On May 10, 1872, Congress passed a law that encouraged people to go West, locate hardrock minerals and stake mining claims on federal lands, and remove treasure troves of gold, silver, copper, and platinum from the public domain—for free. The General Mining Law of 1872, or the "experiment," as some of our predecessors named it, has endured for more than one and a third centuries—a total of 137 years. Today, we can resoundingly assert that the experiment has lasted long enough.

To Support current National Park Services (NPS) and Department of the Interior (DOI) goals to reduce Comprehensive Environmental Response Compensation and Liability Act (CERCLA) liability at park facilities, Phase I Environmental Site Assessments (ESAs) must be conducted to determine whether or not any hazardous waste sites or contamination exists. To facilitate this process we seek assistance in conducting a Phase I ESA consistent with requirements set forth under 40 CFR 312 (the All Appropriate Inquiry (AAI) standard), and requirements in the current American Society for Testing and Materials (ASTM), which is ASTM 1527-05.

The Phase I ESA is also completed to determine if a site is safe for visitors. The Phase I ESA includes an analysis of current and historical conditions at the site with respect to site contaminants and potential for CERCLA liability. The goal of the site assessment is to identify potential liabilities under CERCLA before mitigation activities or transactions take place so that costs can be incorporated into land transactions or clean-up. These measures are required so that individual park facilities do not end up bearing the brunt of the cost of CERCLA clean-up. Phase I ESAs must be conducted by an Environmental Professional (EP) as described under the AAI standard.

An interagency agreement (IA) exist between the NPS and BLM that defines the responsibilities of the Bureau of Land Management (BLM), Department of the Interior, and the National Park Service (NPS), Department of the Interior, in the administration of the Mining Law of 1872, as amended, on lands in the National Park System.

The BLM is responsible for developing and promulgating the regulations and policies to be followed in the administration of the mining laws pertaining to location, annual maintenance, and patenting of mining claims. The BLM regulations that provide for proper location, maintenance, and patenting of mining claims are the definitive executive branch position on such matters. The BLM regulations, instruction memoranda, manuals, and handbooks contain the standards and procedures to be used by the BLM and the NPS for examining the validity of mining claims and preparing mineral reports.

The BLM, in conjunction with the Office of the Solicitor (SOL), Department of the Interior, evaluates and interprets the mining law as construed by the Office of Hearings and Appeals, Department of the Interior, and the courts. Such interpretations are the definitive executive branch position on mining law matters. The BLM is responsible for reviewing and approving all mineral reports. The BLM initiates contest actions on behalf of NPS before the Office of Hearings and Appeals (OHA).

The NPS is responsible for ensuring that operations associated with the exercise of valid existing rights on patented and unpatented mining claims in the National Park System are conducted in a manner that preserves and protects park resources and values. The NPS administers these operations in accordance with applicable laws, including the National Park Service's Organic Act (16 U.S.C. §§ 1 et seq.), the Mining in the Parks Act (16 U.S.C. §§ 1901-1912), and NPS implementing regulations (36 C.F.R. Part 6 and Part 9, Subpart A).

The NPS conducts validity examinations on mining claims located in units of the National Park System, including those claims for which a patent application has been filed, to determine if such mining claims are valid and/or all patenting requirements have been met. NPS mineral examiners or NPS-designated representatives will serve as expert witnesses when the government's case is presented before OHA, including those cases where NPS has employed a mineral examiner under a contract.

Procedures for Determining the Validity of Mining Claims: As used in the Interagency Agreement, the terms "validity examination" and "mineral report" refer to examinations and reports prepared for the purpose of either determining mining claim validity or processing mineral patent applications. The NPS has a National Park Service Programmatic Agreement with the California State Historic Preservation Office (SHPO) titled "A Plan to Minimize the Impacts of Physical Safety Hazard Mitigation Treatments at Abandoned Historic Mines" (California AML PA). The California AML PA was developed by cultural resources specialists, biologists, and mining engineers for the purpose of creating an agreement that allows for closure of historic mining features for public safety reasons, without irreversibly harming cultural resource and wildlife values. While this document has not yet been ap-

proved by the California SHPO, we would like to find out if it would be worthwhile for the Nevada National Parks to develop a similar document.

Determination of Claim Validity: The NPS, or its designated contractors operating under the direction of certified NPS mineral examiners, will conduct validity examinations on mining claims in units of the National Park System, and will prepare mineral reports detailing the findings of validity examinations, making appropriate recommendations to the BLM. The mineral reports will conform to the standards set out in BLM manuals, handbooks, and instruction memoranda. The BLM will review NPS-prepared mineral reports to determine if they meet BLM standards. Reports that meet BLM and NPS standards will be approved. Reports that are inadequate for the recommended action will be returned to the author with an explanation of what steps must be taken to correct the document.

In 2007 the National Park Service and the Bureau of Land Management underwent an audit conducted by the Inspector General for the Department of the Interior. The audit reviewed the management and treatment of abandoned mine lands by these agencies. The Inspector General concluded that the agencies are putting public safety at risk because many physical and environmental hazards have not been addressed for decades. It was noted that at Death Valley National Park, the public was invited to visit sites that had not been adequately mitigated. Specifically mentioned was the Keane Wonder Mine, which was the site of a fatality in 1984. While the auditor was at the mine site, he witnessed a three-year-old child exiting from a collapsing adit while his family explored other openings. Park staff has spoken with visitors at the Keane Wonder site who freely admit that they see the warning signs about mine hazards but disregard them.

Another hazard at the Keane Wonder includes the historic tramway system. Wood members have deteriorated, which, combined with a collapsed tower near the upper terminal, leads to increased strain on the entire tramway. A third issue involves elevated levels of mercury and lead in the tailings left from processing operations. The tailings are very fine and easily become windborne; further testing is needed to determine if the levels of lead and mercury are hazardous to humans or wildlife.

The combination of the physical hazards at the mine, the deterioration of the tramway, and the environmental hazards of the tailings led the park to close the site to public access and non-essential employees in September 2008.

We agree that this is one of the more spectacular hikes within Death Valley National Park and that the site is an excellent example of mining activity in the early 20th century. Our goal is to reopen this site to the public when the human-caused safety issues have been addressed. The Keane Wonder Mine and mill site is being nominated for inclusion in the National Register of Historic Places.

Death Valley National Park has received funding through the Vanishing Treasures program for work on the historic tramway, which will begin in 2009. Funding has also been requested for testing of heavy metals in the tailings; the results will determine if contamination cleanup will be needed. Additional funding has been requested for mitigation of the hazards of the mine openings. The treatments will consider the cultural and natural resource values, and while they will prevent people from entering the mine openings, they will preserve the most significant features of the site and provide for continued use by wildlife, particularly bats.

Abandoned Mineral Lands:

Abandoned mineral lands (known as AML) are one of many types of disturbed lands in the National Park System. AML sites are 1) underground and surface mines, 2) placer and dredge sites, and 3) oil, gas, and geothermal wells. Commodities mined at these sites ranged from soft rocks such as coal and sand/gravel to hard rock minerals such as gold, lead, and copper. Sites can contain waste rock (unprocessed rock), tailings (processed rock), abandoned roads, fuel storage tanks, drainage diversions, buildings such as mills and assay shops, deteriorating structures such as head frames and tramways, and abandoned heavy equipment.

Not surprisingly, the legacy of abandoned mineral lands spans North America. Mining for flint, obsidian, and native copper for tools and weapons, turquoise for jewelry, and clay for pipes began with the arrival of prehistoric peoples. During the 16th century, expectation of mineral wealth drove Coronado's conquistadors beyond the edge of civilization to the heart of an unknown continent. Later, the lure of gold and the prospect of great wealth were responsible for Europeans settling in the western United States. With the beginning of the industrial age, the young nation, hungry for energy, exploited its mineral resources of coal, oil, gas, and uranium, and this too left its mark on the land. Deserted, these sites stand in silent testimony to those who pioneered this country in search of mineral wealth.

An estimated 3,100 abandoned mineral sites can be found in the National Park System, in all 7 regions of the system, and in 45 states. This number translates to

8,400 mined features, 700 oil and gas wells, 1,000 quarries, and 33,000 disturbed acres. Additionally, the National Park Service estimates that 5,000 miles of abandoned access roads exist. Abandoned mineral lands are lands that were disturbed by mineral extraction—underground mining, surface mining, dredging, and oil and gas exploration—and then abandoned. Abandoned mineral lands can be underground with numerous mine openings such as adits and shafts or on the surface in the form of strip mines, quarries, open wells, or pits. Abandoned mineral lands are not only the actual mine or well but include access roads and trails, historic buildings such as mills and company towns, tailings and waste rock piles, and abandoned machinery such as ore carts, steam engines, and pump jacks.

Falling down vertical openings is the most common cause of death and injury in abandoned mines. Darkness, loose debris, and false floors can hide vertical openings. Weathered rock at the edge of an opening can break away and slide into the hole under the weight of a person. Unstable adits and structures are common hazards at abandoned mines.

Lethal concentrations of methane, carbon monoxide, carbon dioxide, and hydrogen sulfide can accumulate in underground passages. Pockets of still air with little or no oxygen can be encountered. By the time persons feel ill, they are no longer able to react.

Mines can cave in at any time! The effects of blasting and weathering destabilize once-competent bedrock through time. Support timbers, ladders, cabins, pump jacks, tanks, and other related structures may seem safe but can easily crumble under a person's weight.

Sand and gravel pits make up a significant portion of the abandoned mineral lands in the national park system. Unused or misfired explosives are deadly. Because old explosives become unstable, minimal vibrations from a touch or footfall can trigger an explosion.

Vertical cliffs—also called highwalls—from which material was extracted are common features of open pit mines and quarries. These highwalls can be unstable and prone to collapse.

Many abandoned mines become flooded. Shallow water can conceal sharp objects, drop-offs, and other hazards.

Some of the materials that were mined, such as uranium and thorium, are radioactive. Because the effects of radiation exposure are cumulative through a lifetime, any can be harmful or fatal to humans, wildlife, and plants.

Mines were constructed and maintained to be safe only while they were in operation. When the miners departed in search of more lucrative deposits, they often left vertical openings uncovered and removed the water pumping and ventilation systems. Support structures, timbers, and ore pillars were removed or left to rot.

Caves are formed naturally over thousands or even millions of years. Mines, in contrast, are formed in comparatively short periods of time through blasting, a process that fractures and destabilizes the wall and roof rocks. Most underground mines do not have natural ventilation and consequently can have lethal air traps. Even experienced cavers can die exploring mines. Mine rescues are extremely hazardous. Mine rescue teams, despite their extensive training, are at significant risk every time they enter an abandoned mine. The tragic and unfortunate reality is that most mine rescues turn into body recoveries.

Abandoned mineral lands can have detrimental effects on soils, water, plants, and animals. The extent of the effects in National Park System units is not known. Inventories are incomplete and parks are still evaluating sites.

Water is one of the resources most frequently harmed by abandoned mines and wells. Water is also the main vehicle that carries abandoned mineral land impacts beyond the immediate site. Elevated concentrations of metals and increased amounts of suspended sediment, acidity, petroleum, and brine threaten surface and underground water quality and aquatic habitats. Acid is created as metals oxidize in sulfide ore and waste rock. Acid allows toxic metals to dissolve and wash into streams and lakes. Acid mine drainage occurs at only a few of the abandoned mines in the National Park System. At some of these sites, the water coming out of the mines is so acidic that it can actually burn a person's skin.

Mining metals requires extracting ore from the ground, crushing the ore to the size of sand grains, and removing the desired mineral. Often the excess material—tailings—is deposited on the surface. During storms and snow melts, water flows over and through the tailings. The tailings still contain relatively large amounts of metals such as lead, zinc, copper, and cadmium. The water interacts with the metals and transports them to nearby streams. Some metals, at concentrations as small as a few parts per million, can damage or kill aquatic plants and animals.

Disturbed lands and unprotected slopes are susceptible to erosion. Uncontrolled surface drainage can remove soils and may make large areas unstable. Every year,

sediments from mine sites cause significant damage to downstream resources. Although some mine and wells are historically significant, most are eyesores. Piles of trash and debris, open pits, waste rock piles, and access roads blemish the otherwise pristine landscapes of the parks. Surface mines and quarries often have the greatest impacts on scenic vistas. In some cases, hundreds of thousands of cubic yards of material have been removed, making restoration extremely difficult.

Mining often stripped away not only the vegetation but also the topsoil that is needed to reclaim the site when mining operations cease. The area left behind is barren and incapable of supporting plant and animal life. Bare soil continues to erode and is carried away from the site to nearby streams and rivers. Here, the sediment clogs stream channels, reducing fish habitat and interfering with natural flow patterns. Even when these effects seem minor at first glance, they may impair larger ecological communities. Soils and water contaminated with heavy metals or chemicals from mineral processing may be harmful to wildlife. These contaminants can become increasingly concentrated in animals higher up the food chain in a process called biomagnification. Affected animals could die or become unable to reproduce.

Abandoned mines do not always have negative consequences. They sometimes provide habitat for wildlife including some rare or endangered species. Some woodrats, bats, salamanders, and owls use mines as habitat. In many parks, special mine closures protect critical habitat and correct safety hazards. Some bat species, which are endangered because their native habitats were destroyed, have begun to inhabit abandoned mine openings. When conditions are suitable, bats can use mines for summer roosts, winter hibernation, nurseries for raising young, and a stopover during migration. Of the 43 bat species native to the United States, 29 rely on mines for a portion of their habitats. The continued survival of several bat species may depend on the few mines and remaining caves that meet the habitat needs of these animals.

The mitigation and reduction of hazards from abandoned mineral lands are often complicated and expensive procedures. The National Park Service establishes the priority for mitigation by considering the level of danger and potential for resource damage. Each site is unique. The chosen method for mitigating a hazardous site depends on several things: available materials at the site, the type of rock, the difficulty of reaching the site, and money. Parks use a variety of methods to close hazardous mine openings. Because of limited funding, parks can usually afford only to fence the hazard and post signs, temporary solutions. Other common mine closure techniques include backfilling, blasting, expandable foam, rock and mortar walls, and bat gates. Virtually all mineral activities require access roads. The erosion and visual scars related to abandoned roads impact park resources.

Scars on the land may last thousands of years even if mined areas stabilize and the vegetation recovers. Carefully planned reclamation can restore natural processes and greatly speed site recovery. Reclamation in the National Park System focuses on reestablishing landscapes and environments that mimic the surrounding undisturbed lands. Mine structures such as mills, shops, headframes, and others of historic value are stabilized and preserved. Otherwise, the pre-mine condition is restored wherever possible. Reshaping the surface stabilizes slopes and drainages, waste rock piles, tailings ponds, highwalls, and access roads. This reshaping often requires the use of heavy equipment to contour the land to look and function like the surrounding undisturbed lands. The restoration of stream channels also provides for the reintroduction of plants and animals that were lost because of mining. The same type of earthmovers that created the mineral extraction scars are often the best suited to remove them.

Cleanup or treatment of toxic materials prevents further impairment of the environment. Small quantities of mining related materials, such as chemicals or fuels used in mining and milling are completely removed. Large quantities of naturally occurring materials, such as unweathered waste rock that produces acids, may be treated on-site. Applications of lime may provide a buffer to prevent the generation of acids. In more severe cases, limestone drains or artificial wetlands filter heavy metals and reduce acidity.

The goals for revegetation of mine sites in the National Park System are the restoration of native plant populations and patterns. The first consideration is the suitability of the soil for revegetation. In harsh conditions, topsoils, compost, or specific nutrients can be added. Specialized nurseries may be needed to propagate suitable plant materials. Sometimes, revegetation work is focused on establishing pioneering species to allow for natural succession. Time and nature then restore the natural productivity in the site.

The National Park Service closes between 10 and 100 mine openings and plugs 5 abandoned oil and gas wells each year. In 1993, the estimated cost of reclamation

of all remaining abandoned mineral land sites in the National Park System was $200 million.

The Death Valley Mine Closure Alliance was formed in 2006 with Rio Tinto Minerals, California Department of Conservation AML program, Bat Conservation International, and Death Valley National Park. The Alliance has surveyed over 200 of an estimated 600 borax mines; identified mines that have significant usage by bats; and are prioritizing closures.

As a final comment, Death Valley estimates there are 6000+ mines within the park, more than any other unit in the National Park Service. Many of these sites have been documented and mitigated in various forms over the last 20 years but many more are left. Most of the mines in Death Valley are historic cultural resources spanning over 100 years of mining, and range in size from mines worked by the "single-blanket" prospector to mines commercially operated by Fortune 500 companies. While many mines are hazards, the safety mitigations should be designed to be sensitive to the cultural significance, interpretive values, and accommodate wildlife uses. This will require a systematic and methodical approach and can be accomplished through a consistently funded program.

I believe the Subcommittee on Energy and Mineral Resources, H.R. 699, the Hardrock Mining and Reclamation Act of 2009, legislation will end the financial and environmental abuses permitted by the 1872 Mining Law—archaic provisions that fly in the face of logic, and are not what taxpayers, sportsmen, conservationists, and western communities want or need.

[NOTE: U.S. Department of the Interior memo dated October 2, 2008, "Mitigating High-Risk Abandoned Mine Land Features" and U.S. Department of the Interior Office of Inspector General Audit Report "Abandoned Mine Lands in the Department of the Interior" dated July 2008, have been retained in the Committee's official files.]

Mr. COSTA. Thank you, Superintendent Reynolds, for your very timely testimony, and your insight as the superintendent of one of our—and as I mentioned—national treasures.

Obviously your own experience and your written testimony will be helpful to the Committee, and so again I thank you.

Our next witness is Mr. Jim Starr, the County Commissioner for Gunnison County, in the great State of Colorado. County Commissioner Starr, please open on your testimony.

STATEMENT OF THE HONORABLE JIM STARR, COUNTY COMMISSIONER, GUNNISON COUNTY, COLORADO

Mr. STARR. Thank you and good morning. First let me start by thanking The Honorable Chairperson, Congressman Costa, and Members of the Subcommittee for this opportunity to testify regarding the Hardrock Mining and Reclamation Act of 2009.

I am Jim Starr. I am and have been a county commissioner in Gunnison County, Colorado, for the past 10 years. My comments today are not directed toward any specific project considered by the board of county commissioners, and should not be construed to be made in a quasi-judicial capacity.

Gunnison County is a rural Western Colorado county consisting of some 15,000 persons and located 230 miles southwest of Denver. We encompass thirty-three hundred square miles, and approximately 87 percent of our land is owned by the Federal and state governments.

There are four points that I intend to make. We recognize that hardrock minerals are valuable natural resources that should be extracted and put to beneficial use.

Second, it is undeniable that the 1872 Mining Law is antiquated and in need to immediate and wholesale reform. The patent mechanism at the core of the 1872 Mining Law is not the appropriate

mechanism currently to make Federal lands available for private hardrock exploration and extraction.

Finally, any new mechanism must include robust presumptive protections so that exploration and operation in special areas and negative impacts to special areas cannot occur.

There is a preface to my presentation that is essential for me to state explicitly, and which will put my comments into context. First, my county and I recognize that hardrock minerals are valuable natural resources that should be extracted and put to beneficial uses.

Second, we recognize that there are impacts, positive, negative, environmental, social, economic, and otherwise, caused by extraction of these resources.

Third, it is only fair and prudent that a mechanism that Congress adopts to make Federal lands available to private hardrock extraction explicitly include measures to ensure the negative impacts be avoided or minimized both by the Federal Government and the operators.

The timeliness of this much needed reform is evident. In 1872 when President Grant signed the legislation into law, the interior west was largely unsettled by people other than Native Americans, and the Federal Government was doing everything in its power to encourage immigrant settlement and to assist in the industrialization of our country.

An acre of land could be, and still can be, claimed and eventually patented. This provides the claimholder with title to public land for as little as $5 per acre, the current day cost of a gallon of milk.

Today, the Rocky Mountain West is largely inhabited, hardrock mineral resources have been and are being developed there and throughout the world, and communities of all sizes have located near mineral resource areas in the West.

In short, 127 years later, mineral extraction may no longer be the highest and best use for Federal laws. Many former mining communities have now developed economies which are incompatible with industrialized mining, and water quantity and quality have become issues of utmost importance in the West.

I respectfully suggest that Congress carefully examine first whether the patent process itself remains a viable, healthy tool, or whether a different process to make Federal lands available to private mineral extraction would better serve the country and still accomplish the mission.

The patent process was a tool appropriate for 1872, when the Federal Government was encouraging not only mineral exploration, but also the wholesale settlement of the West. A similar tool of more than a hundred years ago, Railroad Land Grants, such as the Pacific Railroad Act of 1862, has a similar impetus and is similarly currently outdated.

These grants helped build transcontinental railroads, but resulted in millions of acres of Federal land being divested and placed in private ownership. Would one do the same today to encourage the building of private toll roads? I suggest not.

Section 202 of this legislation, which allows for a selective withdrawal of Federal lands from entry must be retained and made an affirmative presumption. Rebutting this presumption should re-

quire a demonstration by clear and convincing evidence that there are no other locations where the desired minerals can be extracted.

For instance, municipal watersheds are critically sensitive areas that deserve the protection of such a presumption of withdrawal. Available high quality water is already a rapidly dwindling resource in the arid west, and the availability of this water will likely decrease because of climate change.

We have long recognized that significant natural resources such as our national parks must not be open for location and entry. Before it is too late, it is imperative that we now also recognize the local and national importance of protecting our municipal watersheds.

Accordingly, we respectfully request that Congress act as expeditiously as possible to consider these proposals and to pass House Resolution 699, including meaningful and workable withdrawal language. Thank you.

[The prepared statement of Mr. Starr follows:]

Statement of Jim Starr, County Commissioner, Gunnison County, Colorado

Good Morning.

First, let me start by thanking The Honorable Chairperson, Congressman Costa, and the members of the Subcommittee for this opportunity to testify regarding the Hardrock Mining and Reclamation Act of 2009.

I am Jim Starr. I am, and have been, a County Commissioner in Gunnison County, Colorado for the past 10 years. My comments today are not directed toward any specific project being considered by the Board of County Commissioners of Gunnison County and should not be construed to be made in a quasi-judicial capacity.

Gunnison County is a rural Western Colorado county consisting of some 15, 000 persons and located 230 miles southwest of Denver. We encompass approximately 3,300 square miles and approximately 87% of our land is owned by the federal and state governments.

There are four points I intend to make:

- We recognize that hardrock minerals are valuable natural resources that should be extracted and put to beneficial use.
- It is undeniable that the 1872 Mining Law, and its particulars, are antiquated and in need of immediate and wholesale reform.
- The patent mechanism at the core of the 1872 Mining Law is not the appropriate mechanism, currently, to make federal lands available for private hardrock exploration and extraction;
- Any new mechanism must include robust presumptive protections so that exploration and operation in special areas (and negative impacts to special areas) cannot occur.

There is a preface to my presentation that is essential for me to state explicitly, and which will put my comments into context. First, my County and I recognize that hardrock minerals are valuable natural resources that should be extracted and put to beneficial uses. Second, we recognize that there are impacts—positive, negative, environmental, social, economic and otherwise—caused by extraction of these resources. Third, it is only fair and prudent that a mechanism that Congress adopts to make federal lands available to private hardrock extraction explicitly include measures to ensure the negative impacts be avoided or minimized both by the federal government and the operators.

The timeliness of this much needed reform is evident. In 1872 when President Grant signed the legislation into law, the interior west was largely unsettled by people other than Native Americans and the federal government was doing everything in its power to encourage immigrant that settlement and to assist in the industrialization of our country. An acre of land could be, and still can be, claimed and eventually patented. This provides the claimholder with title to public land for as little as $5.00 per acre, the current day cost of a gallon of milk. Today, the Rocky Mountain West is largely inhabited, hard rock mineral resources have been and are being developed throughout the world, and communities of all sizes have located near mineral resource areas in the West. In short, 127 years later, mineral extraction may no longer be the highest and best use for federal lands, many former mining communities have now developed economies which are incompatible with industri-

alized mining, and water quantity and quality have become issues of utmost importance in the West.

I respectfully suggest that Congress carefully examine, first, whether the patent process itself remains a viable, healthy tool—or whether a different process to make federal lands available to private mineral extraction would better serve the country and still accomplish the mission. The patent process—which results in fee simple ownership of federal land by private owners—was a tool appropriate for 1872—when the federal government was encouraging not only mineral exploration but also the wholesale settlement of the West. A similar tool of more than 100 years ago—Railroad Land Grants (e.g. the Pacific Railroad Act of 1862) had a similar impetus and is similarly currently outdated. These grants helped build transcontinental railroads—but resulted in millions of acres of federal land being divested and placed in private ownership. Would one do the same today to encourage the building of a private toll road? I suggest not.

There IS currently a tool available that results in federal encouragement of exploration and use of federal lands for mineral extraction—long term LEASING of federal lands for oil and gas exploration and operations. While this leasing regime has its own flaws, one thing that it does NOT do is transfer fee simple ownership of federal land to private parties. A second benefit of a federal lease mechanism would be that the federal government will remain as a steward of its own land—enhancing its obligation and ability to protect those lands. A further benefit of a non-fee-simple patent transfer is avoidance of the unintended but realistic consequence of public land going into private but foreign ownership. I would respectfully request that Congress examine such a lease approach.

Section 202 of this legislation which allows for selective withdrawal of federal lands from entry must be retained and made an affirmative presumption. Rebutting this presumption should require a demonstration by clear and convincing evidence that there are no other locations where the desired minerals can be extracted. For instance municipal watersheds are critically sensitive areas that deserve the protection of such a presumption of withdrawal. Available, high quality water is already a rapidly dwindling resource in the arid West and the availability of this water will likely decrease because of climate change. We have long recognized that significant natural resources, such as our natural parks, must not be open for location and entry. Before it is too late, it is imperative that we now also recognize the local and national importance of protecting our municipal watersheds.

Accordingly, we respectfully request that Congress act as expeditiously as possible to consider these proposals and to pass House Resolution 699, including meaningful and workable withdrawal language.

Thank you.

[NOTE: Gunnison County Board of Commissioners' Resolution No. 03-63 submitted for the record has been retained in the Committee's official files.]

Mr. COSTA. Thank you very much, Mr. Starr. Unfortunately, I can't give you the same bonus points I gave Superintendent Reynolds. You did go a little past your time, but we do appreciate your testimony nonetheless, and your focus on the specific nature of the legislation.

Our last witness, but certainly not the least, is The Honorable Sheri Eklund-Brown, who chairs the Elko County Board of Commissioners in the State of Nevada, the wonderful State of Nevada.

And I want to thank the Chairperson for the wonderful hospitality they extended the Subcommittee back in 2007 when we visited your wonderful community, and had a chance to see firsthand all the efforts that go on with regards to hardrock mining, and the nice folks of Elko, Nevada. Please open with your testimony.

STATEMENT OF THE HONORABLE SHERI EKLUND-BROWN, CHAIR, ELKO COUNTY BOARD OF COMMISSIONERS, NEVADA

Ms. EKLUND-BROWN. Chairman Costa, and Members of the Committee, we certainly appreciate you coming out and viewing the mining process. I think it was a very worthwhile effort, and I

look forward to having the whole Committee back if possible. Thank you for——

Mr. COSTA. I know that there is some good Basque restaurants.

Ms. EKLUND-BROWN. Great Basque restaurants, yes. Well, we appreciate this opportunity to share thoughts on mining law reform with you, and I doubt that I will get bonus points either.

But with you and your colleagues, we appreciate your interest in hearing from those like me who live and work in mining communities.

It is often said that Nevada has a love affair with mining. At the county level, it is more like a marriage. I am currently the Chair of the Elko County Commission, and Elko County is the heart of gold mining country in the United States.

I represent the county commission to all Federal agencies mining EISs, and cooperating agencies, and natural resources, and mining in general. I have lived in Elko for 46 years, through the booms and the busts. I have been a businesswoman, a realtor, and deeply involved in the youth of our community for many years.

I know firsthand how dependent our county is on mining, and this morning I want to convey to you the implications of that dependency.

Elko County is the fourth largest county in the continental United States. About 70 percent of our county consists of public lands, land that is especially rich in minerals and metals.

In fact, Nevada is the world's fourth largest gold producing region, producing 82 percent of the nation's gold production, and Elko County accounts for 50 percent of the State's gold mining employment.

The county, as well as mining companies, have a very close working relationship with Federal agencies charged with oversight of public lands. Our economy, therefore, relies on multiple use of public lands and stewardship of public lands, and the county actively engages in coordination and cooperative agency status with both the Forest Service and BLM.

Elko County has historically been a mining center since the first settlers appeared about the time of the American Civil War. Today, we are home to some of the biggest and best mineral mining operations in the world.

Gold, silver, and cooper are among the minerals mined in our community, with some of the most advanced and environmentally friendly mining practices. Our community cares about clean air and clean water every bit as much as any of the members of this board do, or anyone in any urban area.

We raise our children in Elko County. We live in Elko County, and the mining companies live in Elko County. They go above and beyond practices demanded by law with mercury emissions, wildlife mitigation on habitat, and wetland conversation work.

If mining companies were not taking care of the environment, they would not be able to operate in our community today. They would not have the quality workforce that they have today.

It is easy to support the mining industry based on all the benefits they bring to our county. Obviously they are a sustainable industry. Over the decades mining has literally put food on the table,

clothes on the backs, and roofs over the heads of hundreds-of-thousands of Nevadans.

Mining, like real estate, has its ups and downs as the economy waxes and wanes, but like the homes we sell in real estate, the minerals and metals produced by our mines never go out of style. America's basic industries, its armed forces, its consumer products, and all of us in this hearing room use metals and minerals every day from our Nation's natural resources.

As America needs the metals that mining produces, communities like Elko need the jobs that mining produces. These are the highest-wage jobs in the State of Nevada, 185 percent more than the average Nevada worker.

They are jobs with benefits, paying wages that can sustain a family, and no community today can have enough high-wage jobs, jobs that allow hard-working people to pay their mortgages and bills, send their kids to college, and keep cars in the garage.

Take away these jobs and you take away far more than income. You weaken the economic stability of our way of life. Suddenly, a lifestyle that one working parent could support now takes two.

The loss of these jobs obviously cannot be replaced by local businesses, and in short, without mining, it would be a short distance between a thriving community that I came from yesterday and a failing one in need of Federal support, much like many others in today's society.

For Elko, the good life becomes endangered if mining becomes endangered, and I see that I am getting kind of close. I have several more pages, but I will conclude with that.

Mr. COSTA. We sure would appreciate that.

Ms. EKLUND-BROWN. This bill is not good for us as it is. We are aware, and the industry is aware, that reform is needed, but not with gross income. You know, they are already paying five percent net proceeds to the State.

I think that everyone feels that a net income base is much more beneficial, but if this bill goes through our community will not be striving, and we will be back for a stimulus package for Elko County. So please consider the impact of this bill in your decisions when you make them as you go forward. Thank you.

[The prepared statement of Ms. Eklund-Brown follows:]

Statement of Sheri Eklund-Brown, Chair,
Elko County Board of Commissioners, Nevada

Thank you for this opportunity to share my thoughts on mining law reform with you and your colleagues. I appreciate your interest in hearing from those like me who live and work in mining communities.

I'm the chair of the county commission and have lived in Elko 46 years—through the booms and the busts. I'm also a businesswoman, a realtor, and have been deeply involved in the youth of our community for many years. I know first-hand how dependent our county is on mining—and this morning I want to convey to you the implications of that dependency.

Elko is the fourth largest county in the continental United States. About 70 percent of our county consists of public land—land that is especially rich in minerals and metals. In fact, Nevada is the world's fourth largest gold producing region—producing 82 percent of the nation's gold production. And Elko accounts for the great majority of the state's total. The county, as well as the mining companies, has a very close working relationship with federal agencies with oversight responsibilities for public lands. Our economy therefore relies on multiple use of public lands

Elko has historically been a mining center since the first settlers appeared there about the time of the American Civil War. Today we are home to some of the biggest

and best mineral mining operations in the country. Gold, silver and copper are among the minerals mined in our community—with some of the world's most advanced and environmentally friendly mining practices.

Our community cares about clean air and clean water every bit as much as people in San Francisco or Boston do. After all, we raise our children in Elko. We don't just make a living there, we make our life there. In fact, mining companies have voluntarily performed wildlife and wetland conservation work and have adopted higher standards of mercury emission controls than required by state law. If mining companies were not taking care of the environment, they would not have the quality workforce they have today.

Obviously, mining is a sustainable industry. Over the decades, mining has literally put food on the table, clothes on the backs and roofs over the heads of hundreds of thousands of Nevadans. Mining, like real estate, has its ups and downs as the economy waxes and wanes. But like the homes we sell in real estate, the minerals and metals produced by our mines never go out of style. America's basic industries, its armed forces, its consumer products and all of us in this hearing room use metals and minerals every day.

As America needs the metals that mining produces, communities like Elko need the jobs that mining produces. These are the highest-wage jobs in the state of Nevada. They are jobs with benefits, paying wages that can sustain a family. And today no community can have enough high-wage jobs—jobs that allow hard-working people to pay their mortgage—pay medical bills—buy things for the kids—and keep a car in the garage.

Take away these jobs and you take away far more than income. You weaken the economic stability of our way of life. Suddenly, a lifestyle that one working parent could support now requires two working parents. The loss of these jobs obviously could not be replaced by local businesses in our community. In short, without mining, it would be a short distance between a thriving community and a failing one need of federal support.

For Elko, the good life becomes endangered if mining becomes endangered.

What is true for our families is true for our country. As a county commissioner, I know our schools, roads, community services, health care—all are built and maintained with the help of mining revenue. Considering direct and indirect employment, the livelihoods of 11,000 people plus their families—with a payroll totaling more than $735 million—depend on mining. Mining contributes more than $2.9 billion annually to the local economy.

In Elko, you don't have to be an economist or a county official to know that we need the tax revenue and the community support that mining provides.

I wanted to drive home this point today because I am fearful that our mining industry may no longer be sustainable. Not if we are going to burden it with what experts describe as the highest tax or royalty on minerals found anywhere in the world. Let's not forget our mining companies already operate in the highest cost country of the world. They are attracted to counties like ours because we have the minerals—we have the skilled workforce—and we have laws that make orderly business possible.

But if the cost of conducting this business reduces the earnings from current investments—and discourages new mining investment—then we will begin to see the end of an industry and, before long, the end of our community. This is an industry that has sustained itself for more than a century in our community. It's an industry that has even thrived in a competitive global economy.

It would be unforgivable if—especially now in a time of economic crisis—this industry was damaged or destroyed by well meaning but misguided officials from our own government. At a time when those without jobs despair of finding them and those with jobs worry about keeping them.

In my community, and maybe in yours, we often hear people wondering: why are Americans losing high-wage jobs? Why are industries that support them moving off shore?

Well, here's one example: thoughtless regulation is driving them offshore. The unintended consequences of this bill will inflict far-reaching harm on communities like mine, sending our jobs overseas. Please keep this in mind as consider the mining industry and its future in this country.

Thank you for allowing me to share my views from Elko County. I will be happy to answer any questions I can.

[NOTE: University of Nevada, Reno Center for Economic Development Technical Report UCED 2008/09-04 submitted for the record entitled "Analysis of Economic and Occupational Skill Impacts of the Hard Rock Mining Sector on the Elko Micropolitan S.A. Economy" has been retained in the Committee's official files.]

Mr. COSTA. We will, and thank you for representing not only the community of Elko, but the mining industry throughout Nevada. We have two new Members that have joined us here, new Members to the Subcommittee; Representative Heinrich from New Mexico, and Representative Lummis from Wyoming.

As the Chair, we are going to be called for votes in about 10 or 15 minutes, and so I would appreciate—I am going to go quickly around, and I think I have one question for three of the panel, and see if we can conclude here before the votes are called so we don't have to come back.

Let me quickly ask for you to explain why the environmental provisions, Mr. Leshy, under H.R. 699 is still needed. Mr. Lamborn mentioned in his opening statement a number of laws that have been introduced over the last three or four decades that protect the environment, and are applicable to the hardrock mining, and why those are not sufficient.

Mr. LESHY. Excuse me, Mr. Chairman, I appreciate the question. It is an important one. We have a panoply of environmental laws that apply to hardrock mining, but they apply in ways that leave very important gaps.

They do not regulate, for example, ground water quality. They do not give the government the right to weigh the proposed mining operation against other uses and values of the Federal lands.

And they create kind of an aura and a culture in the regulatory agencies that the companies have a right to mine, and the government has no right to stop them. That is the sort of basic ethos of this process.

And the results I think are quite clear, because as I pointed out in my opening statement, there are major mines that have opened under all of these regulatory controls that the industry says is sufficient that have created environmental problems and contaminations that go on and on, and require taxpayers to clean them up.

Mr. COSTA. Yes. You made that in your statement. Thank you. Ms. Nazzaro, on your highlights and findings with regards to royalty analysis, what other things do you think we in terms of findings based on your experience do you think we should keep in mind as we work on H.R. 699, gross versus net as such?

Ms. NAZZARO. Well, certainly the issues that we have been raising as far as the number of abandoned mines that are out there. If you look over a 10-year period, the BLM and the Forest Service spent $260 million to clean these up.

The legislation as proposed, CRS estimates would give us $500 million to start addressing that problem, of which it is my understanding that EPA underestimates that it is a $50 billion problem.

So we certainly do need revenues to try to figure out how to handle this problem, and it is unfair that the American taxpayer continues to be taxed basically to clean up these mines.

It is a continuing problem. It is not something that the legislation has taken care of in the past. We continue to have abandoned mines and we could continue to clean them up.

Mr. COSTA. I appreciate that. I think my questions in the last hearing we had on this, I wanted to try to get some prioritization, in terms of how you triage in terms of those that are in the greatest need of cleanup.

Mr. Starr, how does the growth occurrence of hunting and fishing in your region, which my colleague and classmate, Congressman Salazar, always brags about, compare in terms of the role—and compared to the analysis on mining in Gunnison County?

Mr. STARR. It is difficult, because mining tends to be an exclusive use of the land where it takes place. the economy that we have now in Gunnison County is primarily a hunting, tourism, fishing economy, and to the exclusion of those economies is how mining occurs.

So if there are areas that are very important to that economic industry that we now have in Gunnison County, those should be withdrawn from mineralization so that the economy that we have had for the past 30 years continues to thrive.

Mr. COSTA. My final question, Superintendent Reynolds, you talked about the amount of claims around Death Valley, and its impacts. The provision that is included in this bill that there would be no exploration or operations permits issued if mineral activities would impair the resources or lands of the national park, why do you support that provision?

Mr. REYNOLDS. I support that because presently with regard to some of the mining activities, and the hazards that are left, the ground water, the surface water, have been polluted.

We have not had an opportunity to clean these up, whether it be on adjacent BLM lands or Forest Service land, and we are subjecting visitors, as well as employees, to these hazards.

So I think those particular sections would be supporting some of the activities that we have been trying to do all along.

Mr. COSTA. Thank you very much. I want to stay within my time limit. The gentleman from Colorado, Mr. Lamborn, is recognized for five minutes.

Mr. LAMBORN. Thank you, Mr. Chairman, and Mr. Starr, it is good to have someone from Colorado here, and I would recommend to everyone within the sound of our voices to visit Gunnison County. It is a beautiful place.

Mr. STARR. Thank you.

Mr. LAMBORN. To move right along to stay within the time frame here, because we are about to have votes, Ms. Eklund-Brown, how serious would be the consequences to your county if domestic mining were to move off-shore because of onerous tax or other laws?

Ms. EKLUND-BROWN. Our county is 50,000, and 11,000 jobs are directly and indirectly attributed to mining. So the 11,000, plus their families, basically make up the core of our county's population.

Mr. LAMBORN. Would you call the companies in your community good neighbors?

Ms. EKLUND-BROWN. I would say they are the best neighbors anyone could have, and they participate from United Way's biggest donor, contributions to the colleges, the schools, the boys and girls clubs.

They sit on city councils. They are the most actively involved partner from every extreme or angle that any community could want.

Mr. LAMBORN. OK. Thank you. Mr. Leshy, I have several questions for you, and if I can't finish the questions, would you be able to respond in writing if I give you questions as a follow-up?

Mr. LESHY. Of course.

Mr. LAMBORN. OK. Thank you for that. Now, you mentioned that the Federal Government did not receive direct payments to the treasury. You are aware, I am sure, that there are claim maintenance and location fees that are paid directly to the Federal Treasury by mining concerns?

Mr. LESHY. Yes, those are claim location fees, but they don't pay rentals, and they are not based on the acreage, for example.

Mr. LAMBORN. And just so people listening will be aware of the full picture, you are aware that most states, if not all states, do impose severance taxes or royalties even if the Federal Government does not?

Mr. LESHY. That is right, and I should point out that for oil, and gas, and coal, and other Federal minerals, the states may also tax the production of those, but a Federal royalty is still imposed on those. So the mining law is different in that respect.

Mr. LAMBORN. OK. Now you referred to the royalties that would be imposed in this bill as modest if I remember your terminology. How would you square that with the testimony that we heard in the last Congress that said that the eight percent gross royalty that this bill calls for, or the similar bill called for was, quote, the highest ad valorem type royalty in the world, in terms of all minerals as a whole, and then went on to say that this particular witness, when you get above five percent, most countries have experienced a very great decline in levels of exploration taking place. So that you have a short term increase of revenue, but a long term decrease.

Mr. LESHY. Well, there are various ways to measure and compare royalties against each other, and many countries of the world have various kinds of arrangements that they don't call royalties, but that they call profit sharing, or something else. So it is a very tricky business to compare.

If you compare the royalties in this bill, H.R. 699, versus the royalties that the United States charges coal companies, oil and gas companies, those are usually 12, 15, 18 percent. So that was a basic source of why I said they were modest.

Mr. LAMBORN. Let us see. You referenced the 2006 study, the Economic Overview of Nevada Mining, for the conclusion that you stated, that gold mining was a very profitable industry.

However, in that same study—and I am going to quote from it—when one looks at industry average profitability over the long run, rather than focus on an individual mine or mining company in a short period of time, what they will find is that the precious metals mining industry is in fact not particularly profitable.

Mr. LESHY. Well, it depends on how, I suppose, you define long run to some extent, but if you look at today, I mean, there is economic carnage everywhere as we know. The mining companies, gold mining companies, are still a very profitable industry, and the outlook is bright by everything that I read about from industry analysts and financial analysts.

In part, because gold prices stay high in economic recessions and depressions, such as we are encountering. So it is a profitable industry currently, and I think its future is bright.

Mr. LAMBORN. Thank you for that. I will have a couple of follow-up questions, but I want to thank you all for being here today, and I yield back, Mr. Chairman.

Mr. COSTA. Thank you very much. The Chair will recognize the gentleman from New Mexico.

Mr. HEINRICH. Thank you, Mr. Chairman, and Mr. Starr, I will start with you. I wanted to ask how widespread, and forgive me if I missed part of this before I arrived, but how widespread is the sort of historical contamination of water in Southern Colorado from mining activities?

Mr. STARR. It is unfortunately very widespread, and that is one of the major concerns that we have at the county level. The fact those quality waters that serve our communities, that serve as the headwaters of the drinking water supplies clear down to California and through the COMPAC states, are very susceptible to pollution because of these mining activities.

And I think really vividly points out the need for the funding that is proposed in this bill for reclamation efforts.

Mr. HEINRICH. What sort of revenue streams are available to your county right now to clean up those water supplies?

Mr. STARR. Virtually none. I had the opportunity to be very involved in the cleanup of a former mill site and mine outside of Crested Butte over the past five years. Those monies came from a number of sources, a land trust, some State money, some EPA funds, but it was very difficult to have that cleanup process come to fruition because of the lack of funding.

Mr. HEINRICH. Thank you. Ms. Nazzaro; am I saying your name correctly?

Ms. NAZZARO. Yes.

Mr. HEINRICH. With the pace and scale of cleanup at the current level and the funds that you mentioned for cleanup, how many years would it take to address the current problems that we have with necessary cleanup on public lands around the West?

Ms. NAZZARO. I don't know if I can quickly calculate it in my head, but as I said, EPA estimates the problem currently at over $50 billion. So the last time that we looked at it, the Federal agencies——

Mr. HEINRICH. So are we talking about years, decades?

Ms. NAZZARO. We are talking decades, decades beyond that, yes. The agencies over a 10 year period only spent $250 million. So definitely it is going to take a long time to clean this up, and the funds just have not been available.

It has gotten to the point where the agencies have not really even cataloged all the problems because they know that they will never get to them, and so why spend the time cataloging them, and they go to the higher risk areas. You know, places that they are aware of, such as Death Valley, where they know it is a definite threat to the general public.

Mr. HEINRICH. Gotcha. OK. Ms. Eklund-Brown, I just have one quick question for you. How do you sort of reconcile the different playing fields? You know, we have hardrock mining obviously in New Mexico, but we also have oil, and gas, and coal.

The different treatment that hardrock mining receives when it comes to royalties in general, versus these other public resources that are being extracted from our public lands?

Ms. EKLUND-BROWN. Myself, I think it needs to be a fairness issue with all the other extractions, but it also needs to take into account the costs of the development of the mine, and the expense in extraction of taking coal right out of the ground, and being able to use it, and oil and gas, and taking it right out of the ground, and being able to use it.

Where with mining, or for any locatable mineral, it is tons and tons of ore to get one ounce of gold, or the other types of minerals. So they are not similar. They are not parallel processes, and they need to be treated as such.

Mr. HEINRICH. Thank you. I was actually born in Fallon, Nevada, and my father worked for Anaconda Copper. My grandfather was a gold miner, and I very much appreciate the perspective of the State. I think it is one of the great states in our Union.

That said, I do think that maybe the regulatory and legal framework that was appropriate for mining in the 1800s may have changed in the ensuing hundred-and-some years. So, thank you all for being here today.

Mr. COSTA. I thank the gentleman from New Mexico. We have 11 minutes left before the vote. So I am going to recognize the gentlewoman from Wyoming for five minutes of questioning, and then we will close the hearing, and we thank the witnesses again.

For the record, I would like unanimous consent to submit—I think I mentioned the National Mining Association's testimony; the State of Alaska, the Department of Natural Resources testimony; the Office of the Mayor of the City of Boise, Idaho's written letter to the Subcommittee; and any other written testimony that the Ranking Member, without objection, provides, and we will ask for unanimous consent that they be submitted for the record.

[NOTE: The documents listed below have been retained in the Committee's official files.]

- Bieter, David H., Mayor, Boise, Idaho, Letter submitted for the record
- Borell, Steven C., Alaska Miners Association, Comment submitted for the record on H.R. 699, Hard Rock Mining & Reclamation Act
- Eklund-Brown, Sheri, Chair, Elko County Board of Commissioners, Nevada, University of Nevada, Reno, Center for Economic Development Technical Report UCED 2008/09-04 entitled "Analysis of Economic and Occupational Skill Impacts of the Hard Rock Mining Sector on the Elko Micropolitan S.A. Economy" submitted for the record
- Irwin, Thomas E., Commissioner, State of Alaska, Letter submitted for the record
- Keith, Jason, Statement submitted for the record on behalf of the Outdoor Alliance
- Moe, Richard, President, The National Trust for Historic Preservation, National Register of Historic Landmarks managed by the Bureau of Land Management
- Moe, Richard, President, The National Trust for Historic Preservation, List of National Historic Landmarks managed by the USDA Forest Service
- Moe, Richard, President, The National Trust for Historic Preservation, List of National Historic Landmarks with Federal Ownership from the National Register Information System
- Moe, Richard, President, The National Trust for Historic Preservation, Statement submitted for the record
- Parshley, Jeffrey V. and Struhsacker, Debra W., Northwest Mining Association, Paper on "The Evolution of Federal and Nevada State Reclamation Bonding Requirements for Hardrock Exploration and Mining Projects," submitted for the record

- Pueblo of Laguna Tribe, Laguna, New Mexico, Statement submitted for the record on the Mining Law of 1872
- Reynolds, James T., Former Superintendent, Death Valley National Park, California, U.S. Department of the Interior memorandum to Regional Directors/ Associate Directors dated October 2, 2008, on "Mitigating High-Risk Abandoned Mine Land Features" submitted for the record
- Schaumberg, Peter J., Beveridge & Diamond, P.C., "Opinion on Whether H.R. 2262's Imposition of a Royalty on Mineral Production From Existing Valid Unpatented Mining Claims Is Unconstitutional," submitted for the record
- Skaer, Laura, Northwest Mining Association, Statement submitted for the record on Legislative Hearing on H.R. 699—Hard Rock Mining and Reclamation Act,
- Starr, Jim, Commissioners, Gunnison County, Colorado, Resolutions and documents submitted for the record
- State of Alaska Position Paper on H.R. 2262 dated September 26, 2007, submitted for the record

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Mr. COSTA. All right. Very good. You are up, and we have to vote. So the gentlewoman from Wyoming.

Ms. LUMMIS. Thank you, Mr. Chairman, and I want to thank you all for joining us today. My first question is for Mr. Leshy. I am from Wyoming. We are the number one uranium producing state in the nation. We are also number one in reserves.

So I do take issue with your statement that we should be importing more uranium from friendly countries, such as Canada and Australia. Have you analyzed the economic impact to western production, and states in the western United States that would occur from moving these jobs elsewhere?

Mr. LESHY. Congresswoman Lummis, thank you for the question. I did not advocate moving uranium jobs offshore. What my testimony said was that uranium should be subject to the same regime, regulatory regime, that coal, oil, and gas, and oil shale, and other fossil fuels, and geothermal resources are subject to.

That is, a leasing system, as opposed to the hardrock mining system. It is kind of an accident. Of course, when the Mining Law of 1872 passed, uranium was not valuable for anything or even known as a mineral.

And so it was kind of an accident that it was treated under the Mining Law, rather than under a leasing system, which was adopted in 1920 for all these other energy minerals.

So it seems like some sort of loophole frankly that uranium is not subject to leasing like these other energy fuels. Subjecting it to leasing would not necessarily involve moving any jobs offshore.

In fact, uranium is substantially already subject to a leasing system in the uranium bearing areas of western Colorado under a kind of a quirk. After World War II, and the atomic bomb, and Hiroshima, the government withdrew a lot of Federal land in western Colorado as a source of uranium, and put it under a leasing system, which is administered by the Department of Energy.

And that is in fact where historically a lot of uranium production has come from under this leasing system. So I think moving it to a leasing system is actually a very logical move, and would not affect production.

I only pointed out the fact that the world's by far largest producers of uranium, Australia and Canada, are friendly to the United States. So there is really no strategic argument about if we don't mine uranium, it will go to unfriendly countries offshore. I think we would continue to mine uranium under a leasing system.

Ms. LUMMIS. Mr. Chairman, following up on that, you mentioned modest royalties that can be readily absorbed by the mining industry. But as my colleague from Colorado mentioned earlier, there is a study that shows that an eight percent gross royalty would be the highest ad valorem type royalty in the world, in terms of all minerals.

So how do you consider setting a new royalty ceiling as a modest action?

Mr. LESHY. Congresswoman Lummis, there are a lot of different ways to calculate royalties, especially when you go to countries abroad. They have various ways of sort of taxing or recouping some of the costs or some of the value of mining to the government, whether they call it a royalty or not.

I used the adjective modest primarily by considering hardrock mining, and the eight percent in H.R. 699l, compared to other royalties that other miners pay the Federal Government under current law, such as coal pays eight percent, oil and gas, 12-to-18 percent currently, and by those standards it is a modest royalty.

Ms. LUMMIS. Thank you, and my next question is for Ms. Eklund-Brown. I understand that Elko County's unemployment rate is about 4.9 percent, while Nevada's statewide unemployment rate is 9.1 percent.

And that foreclosures on homes in Elko County is a fraction of that in Clark County, in Las Vegas, and a fraction of that in Carson City. What economic differences exist in these Nevada communities that would explain such a disparity?

Ms. EKLUND-BROWN. Gold mining. That is the only basis that makes up the difference in those circumstances. We have tourism, and our tourism is as good as Gunnison County's.

Our recreation is as good, and as strong is our hunting. It is a balanced economy, and a diverse one as much as we can make it, but it is gold mining dependent, and the gold belt, all of the regions that have lower employment have gold mining at this time.

Ms. LUMMIS. Well, Mr. Chairman, I would comment also that my State of Wyoming has the lowest unemployment rate in the Nation right now as well, and it is due to the fact that our mining, oil, and gas, and coal industries are healthy.

So I want to thank the county commissioner for being with us today, and all of the other panelists as well. Thank you very much.

Mr. COSTA. We are pleased that things are good in Wyoming. We wish that for the rest of the country obviously. This concludes the testimony and the questions by the Members of the Subcommittee on Energy and Mineral Resources.

I want to thank the Ranking Member and staff for their hard work, and for the Members who were able to make the hearing. I also want to thank our witnesses, both on this panel and our colleague, Representative Heller, for their desire to want to better inform the Committee as to what we ought to consider as this measure moves forward.

So, at this point in time, we have five minutes left to make our vote, and the Subcommittee is now adjourned.

[Whereupon, at 11:34 a.m., the Subcommittee was adjourned.]

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